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The Distinction Between *Comitia* and *Concilium*

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The Distinction Between *Comitia* and *Concilium*

Disciplines

Arts and Humanities | Classics

re dal medesimo tema δὲ- (15).
ai al contrario di δῖ- non è scono-
testimonianza di Niceta Eugenio
a noi ignoto;

ἄλεμον δ' οὐκ ἔμμε κελύω δῦμενοι...
mbra sensato assimilarlo a quell'or-
v. 81 della *Olimpica* I: ...ὁ μέγας δὲ
roccio interpretativo è giusto, con-
anche a quelle figurazioni espressive
iscono un elemento inconfondibile

Robert S. Wagman

THE DISTINCTION BETWEEN COMITIA AND CONCILIIUM.*

1. Introduction.

The Romans used three words to designate legitimate public assemblies.¹ Of these three, *contio* may have been the most general term for an assembly of any kind; but it normally denotes open meetings called by a state official to discuss public business.² The two other words, *comitia* and *concilium*, denote the various kinds of voting assemblies in which such business was not discussed, but rather was actually carried out in the form of elections, legislation, and trials.³ While *contio* is seldom confused with *comitia* and *concilium*,⁴ the basis of distinction between the two words applied to voting assem-

* A preliminary version of this paper was read on 28 December 1980 at the 112th Annual Meeting of the American Philological Association in New Orleans. Although the scope of the study has since been expanded, the conclusions presented here are essentially the same. I am pleased to thank Professor Jerzy Linderski of the University of North Carolina at Chapel Hill, for his encouragement to undertake this study and for his sustained interest in its development. Thanks as well to my colleagues, Professors R. E. A. Palmer, Ralph M. Rosen, and R. V. Munson, whose scrutiny of an earlier draft greatly improved this paper, and Professors Wesley D. Smith and Robert A. Kraft for technical assistance in gathering and organizing the evidence. Blame for any residual shortcomings is to be laid at my door. In addition to standard abbreviations (CIL, ILS, OLD, RE, TLL) the following appear: CRR = A. K. Michels, *The Calendar of the Roman Republic* (1967); FIRA = S. Riccobono, *Fontes Iuris Romani Anteiusiniani* 12, (1941); Huschke = P. E. Huschke, E. Seckel and B. Kuebler, *Iurisprudentiae Anteiusinianae Reliquias* 16, (1908); LPPR = G. Rotondi, *Leges Publicae Populi Romani*. Estratto dalla «Enciclopedia Giuridica Italiana» (1922; rpt. 1966); MRR = T. R. S. Broughton, *The Magistrates of the Roman Republic* (1951-52); RA = G. W. Botsford, *The Roman Assemblies* (1909); RVA = L. R. Taylor, *Roman Voting Assemblies* (1966); StR = Theodor Mommsen, *Römisches Staatsrecht* 3 (1887-88).

(1) A «legitimate public assembly» was one convoked by a magistrate or a priest for the purpose of discussing or transacting public business (Paulus/Festus 34, 1-458, 5 Lindsay; Cicero *Leg* III 4, 10). Assemblies could be held only on specified days, *dies comitiales* (on which see in general CRR 36-61) and were always restricted to the daylight hours (Plutarch *Aem* 30, Livy XXIX 17, 4 f., [Sallust] in *Cic* 19, Censorinus 24, 3).

(2) The word itself is evidently a contraction of *conventio*, which appears in inscriptions and in the technical literature (e.g. CIL I² 2, 196 line 23 = ILS 1, 18 line 23; *commentarii consulares*, cited by Varro DLL VI 88; Paulus/Festus 100, 20 Lindsay, in *conventionem in contione*): so OLD 432 s.v.; Ernout/Meillet, *Dictionnaire étymologique de la langue latine* 4 (1959) 140. On its relation to other words meaning «assembly», see note 4. *Contio* is also the normal word for «a military parade» or «address before the troops»: thus e.g. Caesar BC III 73, 2 *contionem apud milites habuit* «Caesar addressed his assembled troops.»

(3) According to the triple distinction drawn by Cicero *Div* II 35, 74 *vel in iudiciis populi vel in iure legum vel in creandis magistratibus*

(4) *Contio* is sometimes confused by commentators with *comitia* and *concilium*: see e.g. Weissenborn on Livy II 7, 7, where of the passages cited only I 6, 1-2 seems to apply both words to the same assembly; in all the rest, a preliminary *contio* can be distinguished from the subsequent *concilium*. Paulus/Festus define *contio* as an assembly duly convoked for a specific purpose in contrast with *conventus* «a chance gathering.» As such, the word might indeed apply to voting assemblies as well as public meetings. Botsford RA 139-40

965.

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IX, (1931) pagg. 377 ss. Per Galla-
in altro frammento pindarico, la cui

potrebbe essere lo stesso agone diti-

blies is far from clear, and has been a matter of intermittent discussion at least since the second century. In this paper, I propose to review the history of the question, to examine again the relevant evidence, and to present a new interpretation of the way our ancient sources use the two words.

2. The problem: current theories.

A. So far as I know, only two theories of any importance, one ancient and one modern, have been advanced to explain the words in question. Still frequently cited is the definition, preserved by Aulus Gellius, of Laelius Felix, a jurist who wrote during the time of Hadrian:

Whoever summons not the *universus populus*, but rather some part thereof, ought to announce a *concilium* instead of *comitia*. Tribunes of course do not summon patricians, nor are they able to put legislative questions before them. Therefore, measures passed on a tribune's initiative should properly not even be called *leges*, but *plebiscita*. Patricians were not bound by such measures until Q. Hortensius as dictator carried a *lex* providing that all citizens be bound by whatever *ius* the *plebs* should have established.⁵

The alternative view, put forth by G. W. Botsford in 1904, explains *comitia* as the correct term for electoral assemblies, and *concilium* as the word normally used for legislative and judicial assemblies.⁶ Both definitions are cited with approval by modern lexical and institutional authorities.⁷ Neither Botsford, however, nor Laelius as reported by Aulus Gellius provides a completely satisfactory basis for distinguishing between the words.

B. Laelius' definition is, I believe, the more widely followed of the two, probably

ascribes this usage to «the conservative nomenclature of the pontiffs and augurs,» noting that in Cicero's time, *contio* «had come to be restricted to the non-voting assembly.» This explanation may be correct, although it is not certain that *contio* ever refers unambiguously to a voting assembly. Indeed, Aulus Gellius argues on the basis of M. Valerius Messala's *de auspiciis* 1 (fr. 2 Huschke = NA XVI 13,1) that *manifestum est aliud esse cum populo agere, aliud contionem habere. nam cum populo agere est rogare quid populum, quod suffragiis suis aut iubeat aut vetet, contionem autem habere est verba facere ad populum sine ulla rogatione*. On L. Iulius Caesar's definition in his *de auspiciis* 16 (fr. 1 Huschke = Macrobius *Sat* I 16,29) of *contionem haberi* as *cum populo agi*, see CRR 47 note 26. Additionally, Asconius (71 Clark) states that *contiones* were distinguished from voting assemblies in that those in attendance were not sorted according to groups (i.e. *centuriae*, *tribus*, etc.; see paragraph 2 H below). Botsford (RA 140 note 1), however, disputes this point.

(⁵) Laelius Felix fr. 2 Huschke = Aulus Gellius NA XV 27,4: *is qui non universum populum, sed partem aliquam a desse iubet, non «comitia,» sed «concilium» edicere debet. tribuni autem neque advocant patricos neque ad eos referre ulla de re possunt. ita ne «leges» quidem proprie, sed «plebiscita» appellantur, quae tribunis plebis ferentibus accepta sunt. quibus rogationibus ante patricii non tenebantur, donec Q. Hortensius dictator eam legem tulit, ut eo iure, quod plebs statuisset, omnes Quirites tenerentur*. On Laelius see Julius Paulus in *Digesta* V 4,3.

(⁶) On the Distinction between *Comitia* and *Concilium*, «TAPA» XXXV (1904) 21-32; reproduced with additions in RA as chapter 6, «Comitia and Concilium,» pp 119-38. I refer in this paper only to the later version. Although my conclusions differ from those of Botsford, I have found his work an indispensable guide to all aspects of this topic.

(⁷) See e.g. A. Gudeman's article in TLL IV 44 s.v. *concilium*.

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because it is clear, simple, and prescriptive (*debet* 3). His information is generally reliable: the notice in Gellius preserves additional data, not included above, that accord well with what we know of the assembly system from other sources.⁸ Nevertheless, on the matter of distinguishing between *comitia* and *concilium*, Laelius' testimony is often challenged. It is clear that his generalizing *partem aliquam* (1) actually refers mainly to the *plebs*, since his subsequent observations concern the competency of the *tribunus plebis* to assemble the *populus* and the status of measures passed on a tribune's initiative (*plebiscita*) as law. Moreover, Laelius' insistence on distinguishing these measures from *leges* proper, even though they were equally binding on the entire *populus*, assumes a persistent distinction between assemblies of the *populus* and plebeian assemblies (which he calls *comitia* and *concilium* respectively) throughout the Republican period.⁹ Laelius' definition can therefore be questioned for two reasons:

1) While many scholars today accept this distinction, the existence of an exclusively plebeian assembly after 287 BC at the latest has frequently been denied.¹⁰ Unquestioned and well-attested in earlier periods, the plebeian assembly (usually termed *concilium plebis*) was an organ born of class struggle soon after the birth of the Republic itself. Meeting first as an informal body without official constitutional status, and later in organized assemblies with limited but officially sanctioned electoral, legislative, and judiciary functions, the plebeians were only gradually conceded equal status under the law by the patricians.¹¹ A measure passed by the *concilium plebis* was not binding on the *populus* unless it later received the *patrum auctoritas*, a formal vote of acceptance by the patrician Senators which made the measure binding on *omnes Quirites*.¹² But any such measure may still have been bin-

(8) For example, fr. 1 Huschke (= NA XV 27,1-3) cites the Augustan jurist Labeo (fr. 22 Huschke) on the definitions and functions of the *calata comitia*; fr. 3 Huschke (= NA XV 27,5) discusses the differences between the *comitia curiata*, the *comitia centuriata*, and the *comitia tributa*, and preserves the fact that the centuriate assembly had to be held outside the *pomerium*: see note 24.

(9) Attempts to use correct terminology can be observed in legal inscriptions throughout the Republican period: see e.g. the *lex latina tabulae Bantinae* of the late 2d century BC (CIL I² 2,582 = FIRA 6, line 5 etc.) *ex hac lege plebeve scito* (as against line 8 etc. *ex hac lege*); also two references to the *lex Rubria de damno interfecto* of about 45 BC (LPPR 435-36) in the *lex de Gallia Cisalpina* of 49-42 BC (CIL I² 2,592 = FIRA 19, lines 29-30 [cf. 38-39]) *ex lege Rubria seive id pl(ebi) sc(itum) est*, and the *fragmentum Atestinum*, (CIL I² 2,600 = FIRA 20, lines 12-14 [cf. 19-20]; see note 55 below) *ante legem seive id pl. sc. est [quod L. Roscius a.d. V] eid. Mart. populum plebemve rogavit*.

(10) For example by A. G. Roos, *Comitia Tributa, Concilium Plebis, Leges, Plebiscita*, «Mededeelingen der koninklijke nederlandse Akademie van Wetenschappen», afd. Letterkunde, n.s. III (1940) 251-94; E. S. Staveley, *Tribal Legislation before the lex Hortensia*, «Athenaeum» XXXIII (1955) 1-31; Ernst Meyer, *Römischer Staat und Staatsgedanke* 2 (1961) 199; R. M. Ogilvie, *A Commentary on Livy, Books 1-5* (1965) 385-86.

(11) On the murky origins of the plebeian assembly, see StR III 151-53; RA 262-82.

(12) If indeed the *patrum auctoritas* ever applied to plebeian assemblies. The question is fully discussed, with further bibliography, by Staveley 20-31; cf. E. Gabba, *Appiani Bellorum Civilium Liber Primus* (1967) 171 ad 59,266.

ding on the *plebs* even if it failed to gain this approval.¹³ Moreover, it was through this organ that the *plebs* elected their own magistrates, the *tribuni plebis*, whose purpose was to protect plebeian interests against the abuses of the patrician oligarchy. Therefore, at the height of contention between the *ordines*, the plebeians had an obvious motive for keeping patricians out of their assembly; and, in fact, our earliest sources record the efforts of patricians to invade plebeian assemblies in this period, along with plebeian efforts to exclude them.¹⁴

But the plebeians gradually gained virtually complete equality with the patricians. Final victory came when the *lex Hortensia* of 287 -- for which Laelius Felix is an important witness -- made plebiscites, like *leges*, binding on *omnes Quirites*.¹⁵ This measure, as some have argued, by investing plebeian assemblies with the same lawmaking power as assemblies of the *universus populus*, obviated any motive for distinguishing between them thereafter.¹⁶ Botsford, an early proponent of this view, cites instances in the Late Republican period of patricians in attendance at assemblies called by a tribune.¹⁷ From such occurrences he infers that Laelius' definition, which depends on a distinction between assemblies of the *populus* and those of the *plebs*, is in error.¹⁸

2) Even if plebeian assemblies -- i.e. those convoked by a tribune -- continued to exclude patricians throughout the Republic, there exist a number of passages in which Roman authors refer to such assemblies as *comitia* rather than as *concilia plebis*.¹⁹ Various attempts have been made to explain these passages in such a way as to defend Laelius' testimony, but none has carried conviction.²⁰ Thus Botsford is correct in observing that

(13) So, at least, scholars have assumed. It seems to me equally possible, and perhaps more likely, that a measure that the *patres* failed to accept would have quickly fallen into abeyance.

(14) Taylor (RVA 140 note 9) adduces the verb *submovere* as a *terminus technicus* «of the act of clearing out the *contio* in preparation for the *comitia*» in Livy II 56,10-11 (cf. Dion. Hal. IX 48) II 60,5 III 11,4 XXV 3,16-18 (cf. Cicero *Flac* 7.15). See RA 150 note 9; *StR* I 199, III 390 note 1.

(15) Laelius Felix fr. 2.6-10 Huschke = Aulus Gellius NA XV 27,4 (see paragraph 2 A above); cf. Gaius *IIC* I 3; Sex. Pomponius in *Digesta* I 2,2,8; Pliny *NH* XVI 37; H. von Siber s.v. «plebiscita», *RE* XXI/41 (1951) 54-73.

(16) See note 10.

(17) RA 320 note 1. Taylor (RVA 140-41 note 10) insists that the examples cited by Botsford are in fact *contiones*, which patricians could legitimately attend, rather than plebeian voting assemblies.

(18) RA 130, 137.

(19) RA 120-128. In addition to plebeian assemblies, Botsford (RA 120) adduces a number of other kinds of elections as evidence that *comitia* could denote to an assembly of a part of the people. These include the consular election of 468 (Livy II 64,2), which was boycotted by the *plebs*; the «propraetorian» election of 211 by the troops in Spain (Livy XXVI 2,2); all priestly elections (see note 40 below); and meetings of the *optimates* (Cicero *Rep* I 23,50) and of the Senate (Cicero *Phil* XI 8,19; cf. Vell. Pat. II 124; Tacitus *Ann* I 15) for electoral purposes.

(20) See paragraph 2 D with notes 29-31 below.

¹³ Moreover, it was through this *buni plebis*, whose purpose was to curian oligarchy. Therefore, at the had an obvious motive for keeping sources record the efforts of patri- with plebeian efforts to exclude

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such passages weaken Laelius' definition of *comitia* as an assembly of the *universus populus*

C. Botsford's definition is based not just on objections to that of Laelius, but on a thorough examination of the ancient evidence. In essence, this examination involves only two -- but those extremely voluminous -- authors, Cicero and Livy. In the works of these authors, *comitia* refers to an electoral assembly much more often than to any other type. Conversely, *concilium* is used (in the Roman sphere) to denote a legislative or judicial assembly more often than an election. Botsford explains this usage with reference to ancient philology and institutional procedure. *Concilium*, he argues, was felt to be the *mot juste* for a deliberative assembly by virtue of the Varronian folk-etymology connecting it with *consilium*.²¹ The word would apply to legislative and judicial assemblies, he believes, because they (unlike electoral assemblies) were regularly preceded by a *contio* at which the issue to be decided was debated one last time just prior to the vote. Similar deliberation supposedly did not take place at the *contio* that preceded an electoral assembly, which was devoted to formalities such as prayers and voting instructions.²² Thus the elections were simply called *comitia*, organized voting assemblies without deliberation.²³ Historical developments eventually produced a virtually complete polarization of the two words as elections came to be distinguished from other kinds of assemblies by a variety of factors.²⁴

(24) DLL VI 43: *a cogitatione concilium, inde consilium*. The similarity between the two words inspired numerous puns in ancient authors and caused copyists much confusion (cf. note 57), as Botsford (RA 136: references, notes 2 and 3) observes.

(22) RA 143.

(23) RA 136.

(24) In the late Republic, these factors were four: 1) *Scheduling*. The yearly elections of magistrates were the most regular feature of the political calendar, taking place (after Sulla) each July (StR I 580-88). Legislative and judicial assemblies by contrast might be held at almost any time; for the general restrictions see CRR 36-42, 94-97, 191-206; RVA 17-18. 2) *Form*. Different assemblies were organized either by centuries or by tribes. Centuriate assemblies were based on an ancient method of organizing a much smaller *populus*, and are thought to have been a cumbersome, time-consuming form (RA 201-61; RVA 85-106). The rise of tribal assemblies probably derives in part from a desire to streamline the polling process. Moreover, the centuries could be convoked only by a magistrate with *imperium* -- generally a consul or praetor -- whereas the tribes might convene under a tribune as well (StR I 191-97). After the *lex Hortensia* the centuriate form came to be reserved for those occasions when it was felt to be unavoidable, i.e. chiefly in the annual elections of consuls and praetors (RA 229-61). Thus only once a year was one likely to vote in a centuriate assembly; whereas most legislative (and, before the first century) judicial activity took place in tribal assemblies, which occurred throughout the entire year. 3) *Procedure*. If the centuriate assembly, which was virtually confined to elections, was distinguished from all tribal assemblies by means of its characteristic form, it is also true that electoral assemblies of the tribes differed from other tribal assemblies in the voting procedure that they used. It is clear from a number of sources that in elections all tribes voted simultaneously, while in legislative and judicial assemblies they voted in succession (Plinio Fraccaro, *La procedura del voto nei comizi tributi romani* «Opuscula» II (1957) 235-54; cf. RVA 128-30 note 26). It is not certain that the same distinction obtained in the case of centuriate assemblies, but it is at least arguable that it did; Taylor (RVA 96; followed by C. Nicolet Le

D. Botsford's chapter raises a number of interesting issues which are strictly speaking only tangential to the question under discussion.²⁵ I must therefore with regret forego a

métier du citoyen dans la Rome républicain [1976] 360) stresses the organizational similarity between the tribal and the reformed centuriate assemblies as well as the fact that elections in both assemblies made use of the same structure in the *Campus Martius* (see below), as evidence that the vote *within classes* at centuriate assemblies was simultaneous. If so, simultaneous voting will have applied to elections of both plebeian and curule magistrates, and will have served to accentuate the differences between electoral assemblies on the one hand and legislative or judicial assemblies on the other. 4) *Venue*. Simultaneous polling of all voting units at electoral assemblies required a great deal of space. Thus, while legislative and judicial assemblies are attested in a number of relatively confined areas, such as the *Comitium* (Varro *DRR* I 2,9; most recently estimated at about 1600 m² by F. Coarelli, *Il Foro Romano: periodo arcaico* [1983] 148) and the even smaller *Area Capitolina* (Livy XXXIII 25,7; Cicero *ND* I 38,106; about 1,500 m² according to the measurements given by Platner and Ashby, *A Topographical Dictionary of Ancient Rome* [1929] 48), elections were normally held -- during the Late Republic, at least -- in the less restricting *Campus Martius* (*RVA* 47). The *Saepta Julia*, which were built specifically for these assemblies, covered about 24,000-27,000 m² = 400 m x 60 m, Platner and Ashby 461; 300 m x 90 m, E. Nash, *Pictorial Dictionary of Ancient Rome* [1961] 291). The *comitia centuriata* had in any case been held there from an early date, regardless of purpose or voting procedure (Laelius Felix fr. 3 Huschke = Aulus Gellius *NA* XV 27,5), but by Cicero's day, this assembly was virtually confined to an electoral role, so that the *Campus* became the site for all electoral assemblies, both centuriate and tribal. (In fact, Cicero at *de Orat* III 42,167 even adduces *Campum pro comitiis* as a stock example of metonymy.) Thus it is reasonable to assume, according to Botsford, that elections were distinguished in the public mind from other assemblies not only in their purpose, but by a variety of secondary factors as well, and that such a distinction might well have been reflected in contemporary usage.

(²⁵) Chief among these is his assertion that there was no exclusively plebeian assembly in the late Republic. It should be noted that L. R. Taylor makes some compelling arguments in support of Mommsen's view that a distinction between assemblies of the *populus*, which she calls *comitia*, and plebeian assemblies, for which she uses *concilium plebis*, was in fact observed to the very end of the Republican period, and that patricians actually continued to be barred from plebeian assemblies even when their numbers were so small as to render them incapable of influencing an election by their votes (*RVA* 61-64, 111-112, 139-142 notes 7-10). J. Linderski, *Rzymskie zgromadzenie wyborcze od Sulli do Cezara* [i.e. *The Roman Electoral Assembly from Sulla to Caesar*] (1966) 21-22 takes a similar position, arguing that even if the distinction between assemblies of the *populus* and those of the *plebs* was blurred in the case of legislation and trials, it ought to have been maintained in elections, since the tribunes were in theory officers of the *plebs*, not of the *populus*. Thus it remains possible -- and in my view highly probable -- that the group convening under a curule magistrate (i.e. one who had been elected by the *universus populus*) was *ipso facto* and *de iure* the *populus*, while those gathering under a plebeian magistrate (i.e. one who had been elected by the *plebs*) constituted *ipso facto* and *de iure*, the *plebs*; cf. the precision of Laelius Felix's language in defining *plebiscita* as *quae tribunis plebis ferentibus accepta sunt* (fr. 2.5-6). This would remain true whether or not any *patricii* happened to appear on the day appointed by (let us say) the praetor: even if none did, and the assembly were therefore attended only by plebeians, it would remain an assembly of the *populus* and not of the *plebs*, by virtue of the praetor's presidency. So too if, on another day, a few patricians failed to heed the tribune's order to leave before the vote. Despite their presence and participation, the assembly would remain officially one of the *plebs* and not of the *populus*, thanks to the tribune's presidency. Thus Botsford is only partially correct that «the presence or absence of a few patricians» in an assembly probably mattered little (*RA* 130); their presence did not in the end affect the classification of the assembly in question before the law. But it does not follow that no

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But it does not follow that no

full critique of his argument.²⁶ The decisive objection, however, to Botsford's theory, as also to that of Laelius Felix, is its incompatibility with the ancient evidence. Botsford himself raises this issue by adducing a number of passages from the classical period which do not conform with Laelius' definition.²⁷ Although I disagree with Botsford in some instances, there exist by my count some 21 passages in which Cicero uses *comitia* or *concilium* in a way that contradicts Laelius, while in Livy 41 such passages can be found.²⁸ These deviations were known to Mommsen and his forerunners, who attempted to reconcile the implied testimony of Republican writers with the more explicit testimony of the Imperial jurist.²⁹ Botsford's discussion of these attempts and his judgment concerning their limited success is excellent.³⁰ What Botsford does not admit, however, is that such passages account for only about 7.0% (= 62/881) of the total number of occurrences of these two words in Livy and Cicero. In other words, Laelius' definition is about 93% accurate when judged against the usage of our two most important classical witnesses. This is an impressive rate of accuracy, and some scholars have

effort was made to remove patricians from plebeian assemblies or that the formal distinction between assemblies of the *populus* and those of the *plebs* ever disappeared.

(26) I will however mention one point which is central to Botsford's argument, the supposed relationship between *concilium* and *consilium*. Botsford rejects this derivation (RA 135-36), but uses Varro's belief in it and the many puns based on it (cf. notes 21 above and 57 below) as evidence that the Romans looked on those assemblies that they called *concilia* as being in some sense deliberative bodies. The weakness in this reasoning is what seems to me the inherent unlikelihood that the Romans differentiated between kinds of voting assembly according to the character of the accessory assemblies that preceded them. Any discussion of the vote, after all, took place at the *contio* that took place just before every voting assembly, not during the voting assembly itself. No *comitia* or *concilium* entailed any discussion at all *per se*. In the case of trials, the law provided that both the prosecution and the defense be allowed to state their cases in a series of four *contiones* prior to the vote, the last of which (the so-called *quarta accusatio*) had to take place on the same day as the actual vote, immediately preceding it (Cicero *Dom* 17,45). But judicial assemblies were by far the least common type in the late Republic, and we have Plautus' testimony that such assemblies were colloquially called *comitia* (see note 82). Moreover, the evidence indicates that *contiones* and voting assemblies were strictly distinguished (RA 465-66; cf. RVA 61-62). One might of course expect the lengthier deliberative *contiones* themselves, rather than the actual voting assemblies, to have been called *concilia* while the more perfunctory gatherings retained the general designation. In fact, however, the idea of deliberation is closely attached to the word *contio* and its derivatives as a matter of usage (OLD 432 s.vv. *contionabundus*, *contionator*, *contionor*). Here the length of the *contio* should not be a factor, since the very word implies talk: Cicero, among others, actually uses it as a synonym for *oratio* (Vat 1,3 *Att* XIV 11,1 20,3 XV 2,3; *Fam* IX 14,7 [Asinius Pollio] X 33,2 -- all, interestingly, of speeches in written form).

(27) See note 19 above.

(28) The passages are listed in paragraph 3 C (Table 1,1 section A,1,b and Table 1,2 section A,2,a).

(29) Mommsen, *Römische Forschungen* I (1864) 170 note 8; *StR* III 149-50; K. Berns, *De comitorum tributorum et conciliorum plebis discrimine* (diss. Wetzlar 1875); W. Soltau, *Ueber Entstehung und Zusammensetzung der altrömischen Volksversammlungen* (1880) 37-46.

(30) RA 121-28.

argued plausibly that deviations in the testimonia are due (for example) to simple carelessness in the transmission of Laelius' definition.³¹ Botsford, however, acting on the assumption that contemporary authors are incomparably better sources for the meaning of these words than a second-century jurist, bases his distinction on the actual usage of such authors, i.e. primarily Livy and Cicero.³² Yet even so, his distinction is only slightly more accurate than that of Laelius. In the same number of total occurrences of *comitia* and *concilium* in Livy and Cicero, I find 58 passages (= 6.6% of all occurrences) which definitely conflict with Botsford's distinction.³³

E. The slight difference in accuracy between the two prevailing theories makes it difficult to argue decisively for either one, while the objections I have discussed cast doubt on both. Indeed, there are a few passages that do not conform with either definition.³⁴ Thus even the assumption of random error in our sources (which is of course always a live possibility) militates against choosing one definition over the other. In such a situation, only by successfully explaining *all* the relevant testimony to ancient usage is one likely to decide the matter.

For all these reasons, a complete re-examination of the evidence is needed.

3. Testimonia and interpretation.

A. Two preliminary remarks are in order. First, the words *comitia* and *concilium* are not mutually exclusive in ancient usage. A number of ancient witnesses apply both words to the same assembly, sometimes even in the same passage. Such usage may, as I noted above, merely result from random error or minor confusion. In some instances, however, the extremely close juxtaposition of the two words looks purposeful, and so argues against this assumption.³⁵ One is therefore forced to conclude that the words, not being incompatible, were used correctly, or else that the authorities in question were almost totally ig-

(³¹) See Taylor's argument concerning Gellius' possible unreliability in reporting the words of Laelius Felix (RVA 139 note 5).

(³²) RA 119, 130, 137. Botsford also cites the evidence of Caesar, Sallust, Nepos, and Varro, although these authors together add only about thirty examples to the hundreds found in Cicero and Livy.

(³³) I.e. passages in which *comitia* refers to a legislative or judicial assembly, or in which *concilium* refers to an electoral assembly. Botsford claims that only one exception to his rule can be found, in the *lex Iulia municipalis* (CIL I²2,483 = FIRA 13), which provides for the election of magistrates *comitiis conciliove* (RA 133 note 2). For further exceptions to Botsford's rule, see paragraph 3 C (Table 1,1 section A,1 and Table 1,2 section A,2,a). Exceptions could be multiplied by taking into account the many passages in which the two words clearly include on the one hand assemblies of the *populus* or *plebs*, and on the other electoral, legislative, and judicial assemblies indifferently (such as the passages listed in Table 1,1 section A,1,c and Table 1,2 section A,2,c).

(³⁴) See paragraph 3 C (Table 1,2 section A,1 and Table 1,2 section A,2,a).

(³⁵) E.g. Livy II 60,5 *plus enim dignitatis comitiis ipsis detractum est patres ex concilio submovendo, quam virium aut plebi additum est aut demptum patribus*; cf. Cicero *RedSen* 5,11, *Sest* 30,65, Livy III 13,9.

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ford, however, acting on the
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res ex concilio submovendo, quam
Sest 30,65, Livy III 13,9.

norant of their true meaning beyond the simple definition «assembly.» Our two main witnesses to the classical usage of these words, Livy and Cicero, both occasionally use political terminology with a certain freedom.³⁶ But in most important respects, their command of this sphere is impressive; and furthermore, as I have observed, their use of *comitia* and *concilium* is as a rule extremely consistent. In short, both authors show sufficient expertise and sensitivity to inspire confidence in their testimony on the meaning of these words.

B. Second, although I shall refer to other Republican and Imperial sources, the arguments that I will present are based on evidence garnered from the works of Livy and Cicero. I will forego discussion of their relative merits and simply note the credentials they share as witnesses to the ancient use of political terminology: mainly, that the vast number of occurrences of both words in these authors far outweigh the total found in all others combined; that both of them lived during a time when the assemblies were still functioning; and that between them they cover nearly the entire range of Republican institutional history. I might add that no evidence that contradicts my findings has come to light from other literary or inscriptional sources.³⁷ Thus by «confining» myself in the formal presentation of testimonia to these two authors, I will not be neglecting an important body of evidence.

C. The clearest and most convenient way to marshal such a vast body of evidence is in tabular form. The following charts will serve to illustrate the various meanings of *comitia* and *concilium* as determined by the frequency with which each meaning appears.

Table 1,1 *comitia* (595 occurrences):³⁸

A: Political (595 occurrences):

1. Roman (577 occurrences):

a.) of the *populus* (476 occurrences):

Electoral (426 occurrences):³⁹

(36) This is particularly true with respect to the distinction between the *populus* and the *plebs*, which both authors frequently ignore.

(37) On the literary evidence collected by Botsford see note 32 above. Inscriptional evidence is of little use in settling this question, since most of the material we have confines itself to the equivocating formula *comitia conciliumve*; see note 9 above.

(38) In tabulating instances of *comitia* and *concilium*, I have included occurrences that are implied by the use of multiple modifiers. Thus Cicero *Ver I* 8,23 *proximis consularibus praetoriisque comitiis*, because it refers to two sets of elections, is counted as two occurrences of *comitia*; although the temporal modifier *proximis* is not taken as indicating a separate occurrence (but see Table 2,1 section C,2).

(39) Kings, consuls, praetors, quaestors, curule aediles, censors, and other curule magistrates are assumed to have been elected by assemblies (whether curiate or centuriate) of the *universus populus* even when this is not explicitly stated by the sources.

Cicero *Ver* I 6,17 7,19 *bis* 8,23 *bis* *Man* 1,2 *Agr* II 2,4 7,18⁴⁰ 11,27 *Catil* I 5,11 *Mur* 1,1 *bis* 17,35 17,36 *bis* 18,37 18,38 *ter* 19,38 25,51 26,53 *Sul* 18,51 *RedSen* 7,17 *Cael* 8,19^a *Pis* 5,11 *Planc* 3,7 3,8 4,9 4,10 6,15 *bis* 8,21 20,49 *quinq* 20,50 22,53 22,54 28,68, 29,69 *Scaur* 30 *Mil* 9,24 9,25 15,41, 16,42 *Phil* II 32,80 32,81, 33,82 38,98 *VIII* 9,27 *Fam* I 4,1 *II* 10,1 *VII* 30,1 *ter* [Caelius] *VIII* 2,2 *bis* 4,3 *bis* (12,4)⁴¹ 14,1^a *X* 25,2, 26,1 26,2, 26,3 *Att* I 1,2 10,6 *bis* 11,2 16,12, 16,13 *III* 12,1, 13,1 *bis* 14,1 14,2 18,1 *IV* 2,6 3,3 *bis* 3,4 3,5, 13,1, 14,2 15,4 15,7, 16,6 17,3 *quater* 19,1 *VII* 9,2 *bis* *IX* 9,3 *XII* 8,1 *XIV* 12,1 *QFr* II 1,2 *bis* 2,1 2,2 4,6 11,3 13,5, 15,3 *III* 1,16 2,3 3,2 8,4 *adBrut* I 5,3 *bis*^a 5,4 *bis*^a 11,2 14,1^a *Rep* II 13,25 17,31 *Div* I 27,33 *ter* *ND* II 4,10 *bis* 4,11 *Brutus* 14,55

Livy I 32,1 35,1 47,10 60,3 *II* 2,11 8,3 64,2⁴² *III* 6,1 19,2 20,8 35,1 35,7 35,8, 36,9 37,5 40,12 64,6 *IV* 6,9 6,11 7,3 7,8 *bis* 7,9, 12,4 *bis* 13,5 16,6 *bis* 25,1 25,5, 25,14 35,6 36,4 41,2 43,8 44,1, 44,2 44,5 50,8 51,1 53,13, 54,2 *bis* 54,5 54,8 *bis* 55,4 55,8, 56,1 *bis* 57,9 *bis* *V* 9,1 9,8 12,13 13,2 14,1 14,2, 14,4 17,5 18,3 26,1 31,1, 52,16 52,17 *VI* 1,5 4,7 5,7 18,1 22,7 30,1, 35,5 35,9 35,10 36,3 *bis* 37,4, 37,7 42,9 42,14⁴³ *VII* 6,11 9,4 *bis* 17,10 17,13 18,10, 19,5 21,1 *bis* 21,2 21,4 22,7, 22,9 22,10 *bis* 22,11 *bis* 24,10, 26,11 26,12 *VIII* 3,4 13,10 16,12 *bis* 20,1 23,11, 23,13 23,14 23,17 *IX* 7,12 7,14 15,11 18,14 34,25 *bis* 40,21 42,3, 44,2 46,12 *X* 5,14 9,13 *bis* 11,3 11,10 13,2, 15,7 15,11 16,1 21,13 22,8 *bis*, 36,18 47,5 *XXI* 15,6 53,6 57,4 *XXII* 33,9 33,10 33,11 34,1 34,3 34,9, 34,10 35,2 35,5 *XXIII* 23,9 24,3 31,7 31,8 31,9 31,12 *XXIV* 7,11 *bis* 9,5 9,9 10,2 11,6 43,5, 43,9 *XXV* 2,3 *bis* 2,5 5,2 *bis*^a 7,5 41,10 *XXVI* 18,4 *bis* 18,6 22,2 *bis* 23,2 *ter* *XXVII* 4,1 5,14 *bis* 6,2 6,4 6,5 *bis*, 6,6 6,8 6,10 6,11 8,1^a 11,7, 20,13 21,6 29,3 29,5 *bis* 33,6, 35,1 *bis*, *XXVIII* 10,1 *bis* 10,3 10,4 38,6 38,7, 38,11 *XXIX* 10,1 10,2 *bis* 37,14 38,2 38,4 38,5 *XXX* 26,12 39,4 39,5 40,5 *XXXI* 4,4 49,8 49,12 50,6 11,9 11,10

(⁴⁰) I include as assemblies of the *universus populus* elections of strictly religious officials. This practice is against that of Botsford, who argues that because pontifical elections took place before a special assembly of seventeen tribes, the *minor pars populi*, they were not assemblies of the *universus populus* (RA 120); cf. notes 19 above and 49 below. Passages in Table 1,1 that refer to such assemblies are distinguished by a superscript letter «a» (e.g. *Agr* II 7,18a). The passages concerned deal with elections to various priestly offices. Pontifical elections include: Cicero *Cael* 8,19 *adBrut* I 5,3 *semel* 5,4 *semel* 14,1 (pontifex maximus, Cicero *Agr* II 7,18; Livy XXV 5,2 *bis*), and see the following note; augural: Livy XXXIX 45,8; curio maximus, Livy XXVII 8,1; rex sacrorum, Livy XL 42,10.

(⁴¹) I have not included this disputed passage in my analysis. The mss. read *scis + domitio diem timorae est + <te> exspecto*; Shackleton Bailey notes: «the text remains in doubt. The reading formerly in favor *scis Domitio <comitiorum> diem timori esse* was abandoned after the redating of 97(viii.14); though the comitia might possibly be for the election of a pontifex (see 97 (viii.14).1 n.»

(⁴²) See note 19.

(⁴³) ...factum senatus consultum ut...patres auctores omnibus eius anni comitiis fierent; but there is nothing to suggest that magistrates elected by plebeian assemblies received the *patrum auctoritas*; see note 12 above. Livy's statement therefore applies only to elections of *curule* magistrates for 366.

8⁴⁰11,27 *Catil* I 5,11 *Mur* 1,1
18,51 *RedSen* 7,17 *Cael* 8,19
iens 20,50 22,53 22,54 28,68
2,81, 33,82 38,98 *VIII* 9,27
bis (12,4)⁴¹14,1^a *X* 25,2, 26,1
3,1 *bis* 14,1 14,2 18,1 *IV* 2,6
1 *VII* 9,2 *bis* *IX* 9,3 *XII*
III 1,16 2,3 3,2 8,4 *adBrut* I
r ND II 4,10 *bis* 4,11 *Brutus*

2,20,8 35,1 35,7 35,8, 36,9
6,6 *bis* 25,1 25,5, 25,14 35,6
5 54,8 *bis* 55,4 55,8, 56,1 *bis*
1 31,1, 52,16 52,17 *VI* 1,5
2,9 42,14⁴³ *VII* 6,11 9,4 *bis*
0 *bis* 22,11 *bis* 24,10, 26,11
23,17 *IX* 7,12 7,14 15,11
11,10 13,2, 15,7 15,11 16,1
33,10 33,11 34,1 34,3 34,9,
XXIV 7,11 *bis* 9,5 9,9 10,2
18,4 *bis* 18,6 22,2 *bis* 23,2
⁴¹11,7, 20,13 21,6 29,3 29,5
8,11 *XXIX* 10,1 10,2 *bis*
49,8⁴² 49,12 50,6 11,9 11,10

y religious officials. This practice
k place before a special assembly
universus populus (RA 120); cf.
are distinguished by a superscript
arious priestly offices. Pontifical
ontifex maximus, Cicero *Agr* II
5,8; *curio maximus*, Livy XXVII
read *scis* + *domitio diem timorae*
e reading formerly in favor *scis*
97(viii.14); though the *comitia*

itiis fierent; but there is nothing
auctoritas; see note 12 above.
366.

11,11, XXXII 7,1 7,8 7,13 27,5 27,6 XXXIII 21,9 24,1 42,7 XXXIV 42,2 42,4
42,5 44,4 48,1 53,2 54,1 XXXV 6,2 6,3 8,1 10,1 10,9 20,2 20,7 24,3 XXXVI
45,9 XXXVII 47,1 47,6 50,6 50,7 XXXVIII 35,1 35,3 42,1 42,2 42,5 XXXIX 6,1
23,1 32,5 *bis* 32,11 32,12 32,14 39,6 39,7 39,9 39,10 39,14 40,1 41,5 45,8^a 56,3 XL
17,8 18,1 35,1 37,6 37,8 42,10^a 45,6 45,8 59,4 59,5 XLI 6,1 7,4 8,1 14,3 14,4 14,9 16,5
bis 16,7 17,5 18,16 28,3 28,6 XLII 9,7 28,4 XLIII 11,3 11,5 14,1 XLIV 17,2 17,3
*bis*⁴⁴

Legislative (thirty occurrences):⁴⁵

Cicero *Agr* II 11,27 *bis*⁴⁶12,31^b *RedSen* 11,27 *Dom* 30,79 *bis* 33,87 *Har* 6,11 *Sest*
38,82⁴⁷51,109 *Pis* 15,35 *Phil* I 8,19 *X* 8,17 *XIII* 15,31 *Fam* I 9,16 *Att* I 14,5 *II*
15,2 *IV* 1,4
Livy *III* 20,6 34,6 34,7 37,4 55,3 *V* 46,10^b52,16^b *VIII* 12,15 (*X* 24,18)⁴⁷ XXXI
6,3 6,5 7,1 XLII 30,10;

Judicial (ten occurrences):

Cicero *RabPerd* 4,11 *Dom* 32,86 *Sest* 30,65 34,73 *Mil* 3,7 *Rep* II 36,61
Livy *III* 24,7 29,6 XLIII 16,11 16,12;

(⁴⁴) The first occurrence of *comitia* in this passage is Madvig's universally accepted supplement.

(⁴⁵) These passages refer to the curiate assembly that passed the *lex curiata de imperio*. I regard this organ as a legislative assembly of the *populus* despite the opinion of several scholars (most notably Mommsen, *StR* I³612; K.; Latte, *Zwei Exkurse zum römischen Staatsrecht*: 1. *Lex Curciata und Coniuratio*, «Nachrichten von der Gesellschaft der Wissenschaften zu Göttingen», philol.-hist. Kl., n.F. 1 [1934-36] 59-73) that in it no law was actually passed and no vote taken, but rather that the decision of a previous electoral assembly was confirmed by an oath of loyalty. In the late republic of course it was merely a vestigial assembly intimately bound up with elections, and was attended by thirty lictors instead of voters (Cicero *Agr* II 12,31). Nevertheless, its function was to pass a *lex*, and its original membership must have been the *universus populus*. The status of the *lex curiata* as a proper law and of the *comitia curiata* as a formal voting assembly is defended by A. Magdelain, *Recherches sur l'imperium: la loi curiate et les auspices d'investiture* (1968) 1-35; cf. J. J. Nicholls, *The Content of the lex curiata*, «AJP» LXXXVIII (1968) 257-278; R. E. A. Palmer, *The Archaic Community of the Romans* (1970) 184-88, 202-26. Passages in this table referring to these assemblies are distinguished by a superscript letter «b» (e.g. *Agr* II 12,31^b).

(⁴⁶) The known facts concerning this assembly are these: Sometime after 23 Jan 57, the tribune P. Sestius imposed his right of *obnuntiatio* against an assembly held by the consul Q. Metellus Nepos at the Temple of Castor. Since the assembly was held in the Forum, it must have been tribal, because the *comitia centuriata* could not assemble within the pomerium; and it must also have been either legislative or judicial, since simultaneous polling of all the tribes at elections required the plentiful space of e.g. the Campus Martius (on both points cf. note 24). Sestius' intervention and the subsequent attack on his life by Clodius' gang suggests that the assembly concerned a bill intended to impede Cicero's recall; but Sestius may have been hindering Metellus' activities in some other area in order to force a compromise on the question of Cicero.

(⁴⁷) I have included but not counted Livy X 24,18, where all editors read *Comitio abiit* against the reading of the MSS, *comitia habuit* (endorsed by Taylor *RVA* 130 note 27). If genuine, this would be a legislative assembly of the tribes under the presidency of Q. Fabius Maximus Rullianus (cos 295) for the purpose of assigning consular provinces.

No Distinction as to Purpose (ten occurrences):

Cicero *RedSen* 11,27 *Dom* 14,38 *bis Rep* II 32,56 *Div* I 45,103 II 40,83
Livy VI 6,15 41,10 *bis* XXXIX 15,11;

b.) of the *plebs* (fifty-four occurrences):

Electoral (forty-three occurrences):

Cicero *Ver* I 8,22⁴⁸,24 *bis*⁴⁸,25⁴⁸ II 1,7,19⁴⁸ *Agr* II 8,20 *ter*⁴⁹,22 *bis*⁴⁹,31⁴⁹ [*Caelius*] *Fam* VIII 4,3 *Att* I 1,1 4,1 II 20,6 21,5 23,3 IV 15,8 *bis* *QFr* II 14,4;
Livy II 56,1 56,2 58,1 60,4 60,5 III 24,9 30,6 37,5 51,8 *bis* 54,9 54,11 64,4 64,5 *bis* 64,8
bis V 10,10 29,1 VI 35,10 39,5 39,11 VIII 22,4;

Legislative (five occurrences):

Livy III 17,4 (cf. *concilium* 16,6) 24,7 VI 36,9 37,12 XLV 35,7;

Judicial (five occurrences):

Livy III 13,9 (cf. *concilium* 13,9) XXV 4,5 (cf. *concilium* 3,14-4,4 *quinquies*) XXVI 3,9
3,12 XLIII 8,10;

Legislative and Judicial (one occurrence):

Cicero *Leg* III 19,45;⁵⁰

c.) no distinction between *populus* and *plebs* (forty occurrences):

Electoral (seventeen occurrences):

Cicero *Ver* I 9,25 18,54 *Agr* II 10,26 11,27 *ter* 11,29 *Sest* 51,109 53,113 53,114⁵¹ *Pis*
2,4 [*Caelius*] *Fam* VIII 4,3 *bis* *DeOrat* III 42,167
Livy III 37,5 39,8 VI 40,7;

(⁴⁸) Broughton (*MRR* II 132 and 136) follows L. R. Taylor (*Cicero's Aedileship*, «*AJP*» LX [1939] 194-202) in listing Cicero as *aedilis plebis* for 69 rather than *aedilis curulis* as Mommsen (*StR* I 443 note 2, etc.) and others formerly supposed. I therefore regard this passage as referring to plebeian *comitia*.

(⁴⁹) The comitial form proposed by Rullus to carry out the election of ten land-commissioners -- an assembly of seventeen tribes modeled on the one employed for pontifical elections -- was unusual to say the least. Nevertheless, because the proposed election was to be conducted by a tribune (Rullus himself, in fact), I regard it as a plebeian assembly no less than if all thirty-five tribes had voted, just as I regard priestly elections as expressions of the will of the *universus populus*; see note 40 above. I should note that Cicero does not distinguish clearly in this speech between electoral *comitia* of the *populus* and those of the *plebs*. Some readers may therefore differ with my classification of individual instances by these categories.

(⁵⁰) Here Cicero refers to the two assemblies which drove him into exile, which he denounces as legislative and as judicial proceedings.

(⁵¹) This passage refers to P. Vatinius' unsuccessful campaign for the *aedilitas* of 57. Since it is uncertain whether Vatinius ran for *aed cur* or *aed pl*, it is impossible to say whether this was an assembly of the *populus* or of the *plebs*; therefore I include it here.

I 45,103 II 40,83

8,20 *ter*⁴⁹ 22 *bis*⁴⁹ 12,31⁴⁹ [Cae-
15,8 *bis* QFr II 14,4;
bis 54,9 54,11 64,4 64,5 *bis* 64,8

IV 35,7;

3,14-4,4 *quinquies*) XXVI 3,9

ices):

51,109 53,113 53,114⁵¹ Pis

ero's Aedileship, «AJP» LX [1939]
is as Mommsen (StR I 443 note 2,
ferring to plebeian *comitia*.
of ten land-commissioners -- an
elections -- was unusual to say the
a tribune (Rullus himself, in fact),
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ulus and those of the *plebs*. Some
s by these categories.
to exile, which he denounces as

aedilitas of 57. Since it is uncer-
ther this was an assembly of the

Legislative (two occurrences):

Cicero *Sest* 51,109 *Leg* III 19,45;

Electoral and/or Legislative (six occurrences):

Cicero *Agr* II 11,27 *bis* *Sest* 50,106 54,115 59,125

Livy I 17,9;

Judicial (one occurrence):

Cicero *Leg* III 19,45;

No Distinction as to Purpose (fourteen occurrences): Cicero *RedSen* 5,11 *Dom* 28,75 *Pis*

15,36 *Phil* II 32,81 *bis* *Att* IV 16,8 *Tusc* IV 1,1 *Div* II 18,42⁵² 18,43 *bis*⁵² 35,74 *bis*⁵²

Livy IX 46,14 and XXXIV 2,11;

d.) military electoral *comitia* (three occurrences):

Livy III 51,8⁵³ XXV 37,6⁵⁴ XXVI 2,2,⁵⁴

e.) figurative electoral *comitia* (four occurrences):

Cicero *Phil* XI 8,19 *ter*⁵⁴ and *Rep* I 23,50;⁵⁴

2. Foreign (seventeen occurrences):

Electoral (sixteen occurrences):

Cicero *Ver* II 2,52,128 *ter* 2,52,129 2,52,130 *bis* 2,53,133 2,54,136 *Fam* VIII 1,2⁵⁵

(⁵²) Cicero's observations here apply to assemblies of both the *populus* and of the *plebs*, though only for the period when the *leges Aelia et Fufia* were in effect, i.e. from about the mid-second century until they were superseded by Clodius' legislation in 58 (see LPPR 397). But since Cicero invariably speaks favorably of the *leges Aelia et Fufia* (e.g. *RedSen* 5.11 *Har* 27.58 *Sest* 15.33), I interpret his remarks in these passages in accordance with the period when those measures were in force rather than with the situation that prevailed when Cicero was actually writing.

(⁵³) Irregular elections of *tribuni militum* by rebellious soldiers during the overthrow of the *decemviri* in 449.

(⁵⁴) See note 19.

(⁵⁵) ...illi rumores de comitiis Transpadanorum Cumarum tenus caluerunt, Romam cum venissem, ne tenuissimam quidem auditionem de ea re accepti; praeterea Marcellus, quod adhuc nihil rettulit de successione provinciarum Galliarum et in K. Iun., ut mihi saepe dixit, eam distulit relationem, sane quam eos sermones expressit, qui de eo tum fuerant cum Romae nos essemus. This passage clearly refers to the establishment of the towns of Transpadane Gaul as *municipia*: cf. *Att* V 2,3 eratque rumor de Transpadanis, eos iussos III viros creare, with Shackleton Bailey's note. Most take the phrase *rumores de comitiis Transpadanorum* to mean «rumors about the establishment of quattuorviral elections among the Transpadanes,» and I have followed the consensus; see note 77 below. It would be more consistent with normal patterns of usage to take the phrase as an ellipse for *rumores de comitiis Tr. (in civitatem adimendorum)* (vel sim.), «rumors about an assembly to grant citizen-

[Asinius Pollio] X 32,3

Livy XXIV 23,1 26,16 27,1 XXXII 25.2 XLII 43.7 XXXIII 27,8;

No Distinction as to Purpose (one occurrence):

Livy XXXIV 51,5;

3. *No Distinction between Romans and Foreigners* (one occurrence):

Livy V 1,1;

B. *Non-political* (no occurrences).

Table 1,2 *concilium* (286 occurrences):

A. *Political* (257 occurrences): 1. *Foreign* (210 occurrences):⁵⁶

Cicero *Inv* II 23,69

Livy I 50,2 50,4⁵⁷ 50,6 51,1 51,4 *bis* 51,5 51,9 52,1 [54,1]^c II 44,8 III 2,3 10,8 IV

ship to the Transpadani,» i.e. a Roman legislative assembly for this purpose, rather than a foreign electoral assembly. Such a law (text: *CIL* I²2,600 = *FIRA* 6; cf. Tacitus *Ann* XI 24 and Cassius Dio XLI 36,3) was in fact passed two (or more) years after this letter was written, perhaps by the praetor L. Roscius Fabatus (*MRR* II 258; cf. note 9 above).

(⁵⁶) Foreign *concilia* in general are the assemblies or congresses of various national or federal organizations, especially in Greece, whose members were entire *poleis* themselves rather than the individual citizens of each *polis*. Such organizations are known in Greek by a variety of names that denote the common purpose of the member cities (e.g. *summakhia*) and also by more general names (e.g. *koinon*). Their assemblies, too, are variously called *sunedria*, *ekklesiai*, *sungetoi*, etc., words which can also designate the inner councils of the same organizations. Most of them convened once annually, were structurally less complex than Roman *comitia*, and above all were forms of representative as opposed to direct government. They are therefore fundamentally different from the primary assemblies of the Roman *populus* and *plebs*. On these organizations in general, see J. A. O. Larsen, *Representative Government in Greek and Roman History* (1955). All these assemblies Livy calls *concilia*. (Conversely, the Roman *concilium plebis* is rendered into Greek by Cassius Dio as a *sunodos tou demou* [XXXIX 35,1] and a *sullogos* [XXXVI 39,4]; also as an *ekklesia* [Dion. Hal. IX 49,5] and an *agora* [Appian *BC* I 12]; see H. J. Mason, *Greek Terms for Roman Institutions: a lexical analysis*, American Studies in Papyrology 13 [1974].) I have also included in the category of foreign *concilia* diplomatic conferences in which Roman representatives were involved (e.g. Livy XXX 24,11).

(⁵⁷) Manuscripts and editions frequently vary between *concilium* and *consilium*; cf. note 21. I have followed the Oxford editors (or Teubner where Oxford is lacking) in all cases despite occasional disagreement, and have acknowledged variant readings by referring to this note. An editorial consensus in favor of *concilium*, even against manuscript authority, is counted in this tabulation; a consensus for *consilium* on the other hand -- usually a sign that the sense of the passage clearly requires *consilium* «plan» as opposed to *concilium* «council» -- is recorded but not counted. The latter group of passages appear in square brackets, and are included here only for completeness. All uncertain readings are distinguished in this table by a superscript letter «c» (e.g. Livy I 50,4^c).

XXXIII 27,8;

currence):

.56

II 44,8 III 2,3 10,8 IV

ose, rather than a foreign electoral
24 and Cassius Dio XLI 36,3) was
by the praetor L. Roscius Fabatus

rious national or federal organiza-
rather than the individual citizens
that denote the common purpose
g. *koinon*). Their assemblies, too,
so designate the inner councils of
turally less complex than Roman
ernment. They are therefore fun-
nd *plebs*. On these organizations
History (1955). All these assemblies
Greek by Cassius Dio as a *sunodos*
Dion. Hal. IX 49,5] and an *agora*
lexical analysis, American Studies
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id *consilium*; cf. note 21. I have
ases despite occasional disagree-
n editorial consensus in favor of
a consensus for *consilium* on the
silium «plan» as opposed to *con-*
assages appear in square brackets,
ished in this table by a superscript

23,5 25,7 25,8 61,2 V 1,8 5,8 17,6 36,1^d 43,8 VI 10,7^c 33,6 VII 25,5 31,11 VIII
3,2 3,10^c 11,6 14,10^c 27,9 39,10 IX [3,8 3,9]^f 7,1^c 42,11 43,24 45,8 X 10,11 12,2 13,3
14,3-16,4^c 39,2 XXI 14,1^d 19,8 19,11 20,1 20,7 XXIII 4,4⁵⁸ XXIV 37,11 XXV
16,14 XXVI 16,9^d 24,1 XXVII 9,2 9,6 29,10 30,6^{bis} 30,9 30,12 30,15
30,16 XXVIII 5,13 5,15 7,14 7,17^c 8,2 [26,1 26,4]^e XXIX 3,1^c 3,4 5,3 [5,7]^e XXX
[16,3]^f 21,7 24,11^d XXXI 25,2 25,10 29,1 29,2 29,8 *bis* 32,3 32,4 *bis* 32,5
40,9 XXXII 5,5 10,2^c 19,4 19,6 19,9, 20,1 20,3 20,4 21,1 21,2 21,25, 22,3 22,4 22,9
22,12 36,1 XXXIII 1,7 2,1 2,7 3,7 12,6^c 13,1^c 13,2 16,3 16,5 16,8 17,1 XXXIV
17,11^c 19,7 [26,4]^f 41,4 41,5 51,5 XXXV 12,3 25,4^c 25,5 27,11 31,3 31,4, 32,1 32,3
32,5 *bis* 32,6 32,7 32,8, 33,1 *bis* 33,4 33,8^c 34,1 [34,2]^c 43,7 44,1 46,1 48,1 49,2
49,9 XXXVI 6,3 6,4 6,6 8,2 11,10 12,4 26,1 27,4 28,7 28,9 31,1 31,2 31,9 31,10, 32,9
34,1 35,7 35,8 XXXVIII 8,2 9,11 10,2 30,2 30,3 31,1 32,1, 32,3 34,5 35,1 XXXIX
24,14 25,11 33,5 33,7 33,8 *bis* 35,5, 35,8 36,2 37,7 *bis* 37,15 48,3 48,4, 48,6 50,9
XLI 11,10 24,13 24,20 XLII 6,1 12,6 13,7 37,9 38,1 38,6 38,8 42,3 43,5^c 43,6 43,8
44,6 44,7 47,3 51,8 XLIII 17,4^c 17,7 XLV 18,6 18,7^c 29,9 29,10 31,6 31,7 31,12
32,1;

2. Roman (forty-five occurrences):

a.) of the *populus* (eight occurrences):

Electoral (two occurrences):

Livy I 6,1 and 26,5;

Legislative (two occurrences):

Livy I 8,1 and II 7,7;^c

Judicial (two occurrences):

Livy III 71,3 and VI 20,11;

No Distinction as to Purpose (two occurrences):

Livy I 36,6 and II 28,3;^c

b.) of the *plebs* (thirty-four occurrences):

Electoral (two occurrences):

Livy II 60,5 and III 64,8 (= *comitia* III 64,4 and 64,5 *bis*);

(58) Livy XXIII 4,4 and XXVI 16,9 are the only examples of foreign assemblies that are termed *concilium plebis*. Cf. Livy XXI 14,1 *permixtum senatui...populi concilium*, and XXX 24,11 *permixto paene senatus populi concilio*, the only other references to non-Roman assemblies that show a concern for the social orders of those in attendance. These passages are distinguished in the tables by a superscript letter «d» (e.g. Livy XXI 14,1^d).

Legislative (seventeen occurrences):

Cicero *Sest* 35,75 *Vat* 2,5 6,15 *Inv* II 17,52 *Livy* II 56,15 57,1 III 16,6 18,6 54,15 VI 35,8 38,4 38,7 39,1 XXII 25,17^c XXXVI 5,18 XLIII 16,8 16,9;

Judicial (ten occurrences):

Cicero *Dom* 30,79 *Sest* 30,65
Livy III 13,9 VII 5,5 XXV 3,14^c 3,17 3,19 4,1 4,4 XXXVIII 53,6;

No Distinction as to Purpose (five occurrences):

Cicero *Vat* 7,18 *bis*
Livy II [28,1 28,3]^c 35,4 III 14,5 XXXIX 15,11;

c.) no distinction between *populus* and *plebs* (three occurrences):

Cicero *RedSen* 5,11 *Leg* II 12,31 and III 19,42;

3. *Civitates* (two occurrences):

Cicero *Rep* VI 13,13 and *Fin* III 9,63;

B. Non-political (twenty-nine occurrences):⁵⁹

Cicero *Dom* 28,74 *Sest* 14,32 [*Att* I 1,2]^c *QFr* III 1,24 *Tusc* I 30,72 and IV 32,69 *Rep* I 17,28 *Div* I 24,49 *bis* *ND* I 8,18 *Cato* 23,84 *Off* III 5,25 and 9,38 *Fin* II 4,12 and 24,77

Livy I 21,3^c II [28,1]^c 38,4 [54,7]^c IV 6,6^c [17,3]^c 48,4^c 48,5 V 7,5^c 47,7 VIII 29,2 [X 17,1 XXI 41,2]^c XXII [15,2]^c 53,9 [XXV 14,3 25,7 38,23]^c XXVII 35,4 [XXVII 29,10 XXIX 5,7]^c XXX 21,7 [36,10 XXXII 6,2]^c XXXIII 31,7 32,2 32,7 XXXIV 2,4 [XL 17,1].^c

D. These data illustrate the strengths and weaknesses of both Laelius' and Botsford's definitions. *Comitia* tends to mean both an assembly of the *populus* as opposed to the *plebs*,

⁽⁵⁹⁾ For most of these passages I should translate *concilium* (if at all) as «company,» e.g. Cicero *Tusc* I 30,72) *seclusum a concilio deorum* «shut out of the company of the gods.» T. W. Dougan (*M. Tulli Ciceronis Tusculanarum Disputationum Libri Quinque* I [1905] 92 *ad loc*) makes a trenchant distinction between *concilium* and *consilium* in such passages, which resemble others that I have listed here, e.g. *Livy* IV 6,6 *consules...concilia principum domi habebant* (cf. *Livy* IV 48,4 and 48,5). I include such passages under this heading because, while the *concilia* involved are political in nature, they are obviously not formal voting assemblies, but rather impromptu caucuses of various sorts. The same reasoning applies to the listing of military councils (e.g. *Livy* XXII 53,9). Note that in many such passages the MSS favor the reading *consilium* over the editor's *concilium*, and thus corroborate Dougan's observation. For more on this distinction see note 74.

A second group of non-political *concilia* listed here are festivals, such as the *Ludi Maximi* of 491 (*Livy* II 38,4); the Olympic festival of 207 (*Livy* XXVII 35,4); and the Isthmian festival of 196 (*Livy* XXXIII 32,2).

57,1 III 16,6 18,6 54,15 VI
II 16,8 16,9;

XXVIII 53,6;

nces):

sc I 30,72 and IV 32,69 Rep
25 and 9,38 Fin II 4,12 and

,5 V 7,5^c47,7 VIII 29,2
23]^c XXVII 35,4 [XXVII
II 31,7 32,2 32,7 XXXIV

oth Laelius' and Botsford's
ulus as opposed to the plebs,

) as «company,» e.g. Cicero *Tusc*
T. W. Dougan (*M. Tulli Ciceronis*
enchant distinction between *con-*
isted here, e.g. Livy IV 6,6 *con-*
such passages under this heading
sly not formal voting assemblies,
to the listing of military councils
ading *consilium* over the editor's
listinction see note 74.

re Ludi Maximi of 491 (Livy II
ival of 196 (Livy XXXIII 32,2).

and an electoral as opposed to either a legislative or a judicial assembly. *Concilium* tends to denote plebeian assemblies rather than those of the *populus*, and legislative or judicial assemblies rather than elections. The statistical significance of exceptions to either rule is not great. This tabulation also exposes a crucial fact which neither Laelius' nor Botsford's definition takes into account. Both definitions pertain chiefly to *comitia* and *concilium* in the Roman sphere. But there is overwhelming evidence indicating that *concilium* at any rate refers usually *not* to a Roman voting assembly, but to an assembly made up of delegates representing a number of (from the Roman point-of-view) foreign states. Botsford cites the evidence that illustrates this point;⁶⁰ but he goes too far in assuming that «the Romans apply to foreign institutions in general the Latin terms with which they are familiar, and in the same sense in which these terms are used of Roman institutions; in this way only could they make themselves understood» (emphasis mine).⁶¹ So stated, this principle appears unobjectionable. But when a Roman writer mentions a *concilium*, he is more apt to be talking about a foreign assembly than a domestic one. Realizing this fact, one probably ought to reverse Botsford's procedure and attempt to explain what a Roman *concilium* had in common with a foreign one instead of assuming that foreign *concilia* somehow conformed to a putative Roman model.

E. Cicero, moreover, who seldom has occasion to mention foreign assemblies, rarely uses *concilium* in a political sense. For him, any voting assembly, whether Roman or foreign, is normally termed *comitia*, while *concilium* refers primarily to gatherings outside the political sphere. Livy, although he most frequently applies the word to foreign national assemblies, speaks of non-political *concilia* as well. This datum removes the basic semantic field of *concilium* still farther from the sphere of the Roman constitution. Thus, while any new definition must be based on the vast number of instances in which *concilium* denotes a foreign assembly, it must not overlook the existence of non-political *concilia*.

F. The tables suggest further that the two words reflect two very different ways of looking at assemblies. In both cases the categories included in the charts stem from the frequency with which each word refers to one type of assembly or another. What is interesting is that distinctions in the various meanings of each word betoken different patterns of usage and meaning in our sources. In the case of *comitia*, the major categories of meaning are determined with reference to the various *purposes* of the assemblies in question, or else with regard to their *structure*. For *concilium* on the other hand, the various categories of meaning correspond more closely to differences in the *composition* or *membership* of assemblies. This difference in the categories of meaning relevant to each word becomes clearer when one considers the modifiers applied to each word by our sources. The following set of tables will serve to detail these differences:

(⁶⁰) RA 133.

(⁶¹) RA 124.

Table 2,1 *comitia* with modifiers (267 occurrences):

A. Modifiers denoting structure (forty-seven occurrences):

1. *comitia centuriata* (thirty-one occurrences):

Cicero *Agr* II 11,27 *RabPerd* 4,11 *Mur* 1,1 *RedSen* 11,27 *Dom* 14,38 30,79 *bis* 32,86 33,87 *Har* 6,11 *Sest* 30,65 34,73 51,109 *Pis* 15,35 *Phil* I 8,19 X 8,17 XIII 15,31 *Fam* I 9,16 VII 30,1 *Att* IV 1,4 *Rep* II 36,61
Livy I 60,3 II 2,11 III 34,6 34,7 37,4 55,3 V 52,16 VI 41,10 VIII 12,15 XLII 30,10;

2. *comitia tributa* (eight occurrences):

Cicero *Agr* II 11,27 *bis* *Fam* VII 30,1 *Att* IV 16,8 *Leg* III 19,45
Livy II 56,2 58,1 60,4;

3. *comitia curiata* (eight occurrences):

Cicero *Agr* II 11,27 *bis* *Dom* 14,38 *Rep* II 13,25 17,31
Livy V 46,10 52,16 VI 41,10;

B. Modifiers denoting purpose (190 occurrences):

1. Elections of magistrates (178 occurrences):

a.) consuls (seventy-two occurrences):

comitia consularia (fifty occurrences):

Cicero *Ver* I 6,17 7,19 8,23 *Catil* I 5,11 *Mur* 18,38 26,53 *Sul* 18,51 *Scaur* 30 [Caelius] *Fam* VIII 2,2 *Att* IX 9,3

Livy II 64,2 III 64,6 IV 13,5 25,1 25,5 25,14 36,4 43,8 50,8 53,13 57,9 V 31,1 VI 37,4 VII 17,10 21,1 *bis* 21,4 22,9 22,10 22,11 26,12 IX 44,2 X 9,13 11,10 13,2 22,8 47,5 XXI 57,4 XXIV 43,5 XXV 2,3 XXVII 4,1 XXXIII 24,1 42,7 XXXV 10,1 XXXVII 47,1 47,6 XXXIX 6,1 XLI 28,3 XLII 28,4 XLIII 11,5;

comitia consulibus rogandis/creandis and *comitia (pro)consuli (uni) rogando/creando* (ten occurrences):

Cicero *Div* I 27,33

Livy III 37,5 XXIII 31,12 XXVI 18,4 22,2 XXVIII 38,6 XXXV 24,3 XXXVIII 42,2 XL 18,1 XLIII 11,3;

comitia (pro) consulis (unius sub)rogandi/creandi (four occurrences):

Livy III 19,2 X 11,3 XL 37,8 XLI 17,5;

comitia consulum (eight occurrences):

Cicero *QFr* II 2,1

Livy III 20,8 IV 7,8 12,4 16,6 54,8 VI 42,9 XXXIV 54,1;

b.) praetors (twenty-two occurrences):

comitia praetorum (ten occurrences):

Cicero *adBrut* I 11,2

Livy XXII, 35,5 XXIV 9,6 XXVII 35,1 XXVIII 10,3 XXXII 7,13 and
27,6 XXXIII 21,9 XXXIX 32,14 XL 59,5;

comitia praetoria (nine occurrences):

Cicero *Ver* I 8,23 *Planc* 29,69 [Caelius] *Fam* VIII 4,3 *adBrut* I 5,4

Livy X 22,8 XXVI 23,2 XXVIII 38,11 XXIX 38,4 XXXIV 42,4;

comitia praetoris subrogandi (two occurrences):

Livy XXXIX 39,7 and 39,14;

comitia praetoribus creandis:

Livy XXIV 23,1;

c.) censors (thirteen occurrences):

comitia censoribus creandis (six occurrences):

Livy VII 22,7 XXIV 10,2 and 11,6 XXVII 11,7 XXXII 7,1 XLIII 14,1;

comitia censorum (five occurrences):

Cicero *Ver* II 2,54,136 and *Att* IV 2,6

Livy XXXIV 44,4 XXXIX 41,5 XL 45,6;

comitia censoria (two occurrences):

Livy VII 22,11 IX 34,25;

d.) quaestors (five occurrences):

comitia quaestoria (four occurrences): Cicero *Fam* VII 30,1 Livy IV 54,2 54,5 54,8;

comitia quaestorum: Livy IV 44,2;

e.) aediles (five occurrences):⁶²

comitia aedilicia (three occurrences):

Cicero *Planc* 4,10 and 28,68 Livy X 9,13;

comitia aedilium: Livy VI 35,10;

comitia aedilis plebis: Cicero [Caelius] *Fam* VIII 4,3;

f.) tribunes (twenty-five occurrences):

comitia tribunorum (*plebis/militum*) (sixteen occurrences):

Livy (*plebis*) V 10,10 VI 35,10 39,5

(*militum*) IV 7,8 16,6 57,9 V 9,8 13,2 14,1 26,1 VI 4,7 5,7 30,1 35,5 35,10

(unspecified [\neq *militum*]) IV 12,4;

*comitia tribunicia*⁶³ (five occurrences): Cicero *Att* I 1,1

Livy III 30,6 IV 44,1 and 54,2 VI 39,11;

(⁶²) It will be noted that these passages distinguish between curule aediles and aediles of the *plebs* in only one instance (*Fam* VIII 4,3). Although one may infer that this passage therefore refers to an assembly of the *plebs*, the modifier itself refers only to the magistrate, and not directly to those voting in the assembly.

(⁶³) These examples include elections of *tribuni plebis* (Cicero *Att* I 1,1 Livy III 30,6 51,8 V 10,10 VI

comitia tribunis (plebis) creandis (two occurrences):

Livy III 51,8 and VI 39,5;

comitia tribunis (militum/consulari potestate) creandis (two occurrences):

Livy IV 6,9 and VI 35,9;

g.) priests (eight occurrences):

comitia sacerdotum (three occurrences): Cicero *ad Brut* I 5,3 5,4 14,1;

comitia pontificia: Cicero *Cael* 8,19;

comitia pontifici maximo creando: Livy XXV 5,2;

comitia pontificis maximi: Cicero *Agr* II 7,18;

comitia auguris creandi: Livy XXXIX 45,8;

comitia maximi curionis: Livy XXVII 8,1;

h.) Miscellaneous (eleven occurrences):

*comitia collegae*⁶⁴ (*sub*)*rogando* (four occurrences):

Livy II 8,3 XXIII 35,2 and 31,7 XLI 16,5;

*comitia Xviris*⁶⁵ *creandis* (three occurrences):

Cicero *Agr* II 8,20

Livy III 35,1 40,12;

comitia magistratuum (two occurrences):

Cicero *Sest* 51,109 and 53,113;

comitia praetoris et Boeotarcharum: Livy XLII 43,7;

comitia regi creando: Livy I 35,1;

i.) Candidates (seventeen occurrences):

comitia mea/nostra (eight occurrences):

Cicero *Ver* I 8,22 9,25 II 1,7,19 *Agr* II 2,4 *Att* I 1,2 10,6 [Caelius] *Fam* VIII 2,2 4,3;

comitia eius: Livy IX 42,3;

comitia eorum: Livy IV 7,3;

comitia sua: Cicero *Att* IV 3,3;

comitia tua: Cicero *Pis* 5,11;

comitia Dolabellae (two occurrences): Cicero *Phil* II 32,81 and 33,82;

comitia Flavi: Livy IX 46,12;

comitia Quinti fratris: Cicero *Att* I 4,1;

comitia communia patrum ac plebis: Livy IV 35,6;

2. Legislation (seven occurrences):

35,10 39,5 35,11) and of *tribuni militum consulari potestate* (Livy IV 6,9 12,4 16,6 44,1 54,2 57,9 V 14,1 26,1 VI 4,7 5,7 30,1 35,5 35,10).

(⁶⁴) These examples include elections of *Xviri agris assignandis* (Cicero *Agr* II 8,20) and of *Xviri consulari imperio legibus scribundis* (Livy III 35,1 40,12).

(⁶⁵) All of these examples concern consular elections.

occurrences):

3 5,4 14,1;

[Caelius] *Fam* VIII 2,2 4,3;

1 33,82;

4 16,6 44,1 54,2 57,9 V 14,1

Agr II 8,20) and of *Xviri con-*

comitia legum: Cicero *Sest* 51,109;
comitia de lege: Livy III 24,7;
comitia legi perferendae: Livy III 16,6;
comitia ferendae legis: Livy XLV 35,7;
comitia privilegii: Cicero *Leg* III 19,45;
comitia rogationi ferendae: Livy XXXI 6,5;
comitia omnium earum rogationum: Livy VI 37,12;

3. Trials (five occurrences):

a.) Genitive of the charge or penalty (three occurrences):

comitia capitis: Cicero *Leg* III 19,45;
comitia perduellionis: Livy XLIII 16,12;
comitia falsi testis: Livy III 29,6;

b.) Genitive of the defendant:

comitia M. Volsci: Livy III 29,6;

c.) Prepositional phrase:

comitia de reo: Livy III 24,7;

C. Other modifiers (thirty occurrences):

1. Modifiers pertaining to voters⁶⁶ (thirteen occurrences):

comitia populi (Romani) (three occurrences): Cicero *Mil* 3,7 *Rep* II 32,56 *Div* II 18,42;
comitia militaria (two occurrences): Livy III 51,8 and XXV 37,6;
comitia sua (two occurrences): Cicero *Rep* I 23,50 and Livy V 29,1;
comitia huius: Cicero *Phil* VIII 9,27;
comitia populi ac multitudinis: Cicero *Mur* 19,38;
comitia Transpadanorum: Cicero [Caelius] *Fam* VIII 2,2;
comitia urbana: Livy III 51,8;
comitia utriusque populi: Livy V 1,1;
comitia vestra: Cicero *Agr* II 11,27;

2. Modifiers pertaining to time⁶⁷ (seventeen occurrences):

Cicero *Ver* I 7,19 8,23 *Catil* I 5,11 *Planc* 20,49 22,53 22,54 *Fam* X 32,3 *Div* I 27,33
Livy II 56,1 V 13,2 14,4 VI 42,14 VIII 22,4 IX 15,11 40,21 XXX
26,12 XXXV 20,2;

3. Incidental modifiers.⁶⁸

⁽⁶⁶⁾ For discussion of these passages see paragraph 3 H-I below.

⁽⁶⁷⁾ This group may be further divided into modifiers that denote the time of the assembly itself (e.g. *Ver* I 7,19 *hodiernis comitiis*) and those that denote the period of time for which the results of the vote will be operative (e.g. [Asinius Pollio] *Fam* X 32,3 *comitia bienni*), but this distinction does not concern the present study.

⁽⁶⁸⁾ This group comprises various adjectives, such as *nullus*, *verus*, and so forth, as well as demonstratives, none of which I thought worth tabulating.

Table 2,2 *concilium* with modifiers (124 occurrences):

A. Modifiers denoting membership (124 occurrences):

1. Genitive (102 occurrences):

a.) denoting a group of people (88 occurrences):

concilium plebis (seventeen occurrences):

Livy II 57,1 III 18,6 54,15 VI 38,4 38,7 39,1 VII 5,5 XXII 25,17^c XXIII 4,4⁶⁹ XXV 3,14^c 3,19 4,1 4,4 XXVI 16,9 XXVII 5,18 XXXVIII 53,6 XXXIX 15,11;

concilium Achaeorum (eleven occurrences):

Livy XXVII 30,6 30,12 XXVIII 7,17^c XXXI 25,2 XXXVI 6,4 31,1⁷⁰ 31,9 31,10 XXXVIII 34,5 XXXIX 33,5 XLII 51,8;

concilium gentis (eight occurrences):

Livy II 2,3 XXXII 19,4 19,9 XXXV 34,1 XXXVI 6,3 XXXIX 25,11 33,8 XLV 18,6;

concilium Aetolorum (seven occurrences):

Livy XXVI 24,1 XXXI 29,1 32,5 XXXIII 3,7 XXXV 49,9 XXXVI 28,7 XXXVIII 10,2;

concilium populi (seven occurrences):⁷¹

Livy I 26,5 36,6 III 71,3 VI 20,11 XXI 14,1^d XXIV 37,11 XXX 24,11;^d

concilium deorum (five occurrences):

Cicero QFr III 1,24 Tusc I 30,72 IV 32,69 Div I 24,49 NDI 8,18;

concilium (populorum) Latinorum (four occurrences): Livy I 51,9 VI 33,6 VII 25,5 IX 42,11;

concilium (omnium) Etruriae populorum (three occurrences): Livy II 44,8 X 10,11 14,3;

concilium Boeotorum (three occurrences): Livy XLII 13,7 43,5^c 47,3;

concilium sociorum (two occurrences): Livy IX 7,1^c XXVII 30,9;

concilium Acarnanum (two occurrences): Livy XXXVI 12,4 XLV 31,12;

concilium hominum (two occurrences): Cicero Rep I 17,28 VI 13,13;

concilium principum (two occurrences): Livy IV 6,6^c IV 48,4;^c

concilium Thessalorum (two occurrences): Livy XXXVI 8,2 XLII 38,6;

concilium Arcadum: Livy XXXII 5,5;

concilium caelestium: Cicero Off III 5,25;

concilium divinum animorum: Cicero Cato 23,84;

concilium earum (= *Camenarum*): Livy I 2,3;^c

(⁶⁹) ...*concilii eorum* [i.e. *Achaeorum*] *recusarat esse*.

(⁷⁰) This group includes both Roman (I 26,5 36,6 71,3; VI 20,11) and foreign (XXI 14,1 XXIV 37,11 XXX 24,11) assemblies.

(⁷¹) I take this construction as a metonymic equivalent to the genitive denoting a group of people.

II 5,5 XXII 25,17^c XXIII
18 XXXVIII 53,6 XXXIX

2 XXXVI 6,4 31,1⁷⁰ 31,9

3 XXXIX 25,11 33,8 XLV

,7 XXXV 49,9 XXXVI

37,11 XXX 24,11;^d

ND I 8,18;
Ivy I 51,9 VI 33,6 VII

Livy II 44,8 X 10,11 14,3;

3,5^c 47,3;

II 30,9;

XLV 31,12;

VI 13,13;

1;^c

XLII 38,6;

concilium Epirotarum: Livy XLII 38,1;

concilium iuvenum: Livy XXII 53,9;

concilium legatorum: Livy XXXIII 31,7;

concilium Macedonum: Livy XLV 32,1;

concilium Magnetum: Livy XXXV 31,4;

concilium pastorum: Cicero *Off* III 9,38;

concilium patrum: Livy IV 48,5

concilium Samnitium: Livy VII 31,11;

concilium virtutum: Cicero *Fin* II 4,12;

concilium Gallorum: Livy V 36,1⁷²

b.) denoting a region or territory (nine occurrences):⁷³

concilium Etruriae (three occurrences): Livy V 5,8 17,6 X 16,4;

concilium Graeciae (two occurrences): Cicero *Inu* II 23,69 Livy XLV 31,6;

concilium Achaiae: Livy XXXIV 41,4;

concilium Galliae: Livy XXI 20,7;

concilium Hispaniae: Livy XXI 19,11;

concilium totius Peloponnesi: XXXIX 37,7;

c.) Joint conferences (five occurrences):

concilium Asiae Graeciaeque: Livy XXXIII 32,2;

concilium Gallorum et Ligurum: Livy XXIX 5,3;

concilium Romanorum Aetolorumque: Livy XXVIII 7,14;

concilium Romanorum ac sociorum: Livy XXXIII 13,2;

concilium Volscorum Aequorumque: Livy IV 25,7;

2. Adjective (twenty-two occurrences):

concilium Achaicum (fourteen occurrences):

Livy XXXVI 31,2 34,1 35,7 35,8 XXXVIII 30,2 30,3 XXXIX 37,15 48,3 48,4 48,6

50,9 XLII 12,6 37,9 XLIII 17,4;^c

concilium Panaetolicum (et/aut Pyliacum) (three occurrences):

Livy XXXI 32,3 32,4 XXXV 32,7 (cf. XXXI 29,1);

concilium publicum (two occurrences): Livy [I 54,1]^c II 28,3^c [54,7]^c VIII 29,2;

concilium Aetolicum: Livy XLII 6,1;

concilium Boeoticum: Livy XLII 44,6;

concilium nostrum: Livy XXXIX 37,7;

B. Other modifiers.⁷⁴

(72) Editors have generally rejected the word *Gallorum* as an interpolation; therefore I have not counted this passage in my tabulation, but include it here for the sake of completeness.

(73) See notes 90 and 93.

(74) A further distinction between *concilium* and *consilium* lies in the ability of the latter to accept

^d foreign (XXI 14,1 XXIV 37,11

ive denoting a group of people.

G. From this evidence a clear distinction between the two words begins to emerge. The modern student of Roman institutions is concerned with the purpose, organization, and composition of all assemblies. Our ancient sources show the same concerns; but after studying the modifiers that they use to convey such information about the assemblies and after observing the distribution of these modifiers between the two available words for assemblies, *comitia* and *concilium*, one is forced to the following conclusion: when our ancient sources use *comitia* in speaking of an assembly they are primarily interested in the purpose or structure of that assembly rather than in its corporate identity or the identity of those in attendance; when they use *concilium* the converse is true, and their primary interest is precisely in the corporate identity of the assembly or the identity of those in attendance. This bifurcated pattern of usage must reflect the basic difference in meaning between the two words. This difference, which is nearly invisible however long one scrutinizes the words themselves, is clearly related to the inherent capacity of each word to accept *modifiers*; for each of the words takes a set of modifiers peculiar to itself, i.e. ones which it does not share with the other word.

H. The distinct groups of modifiers proper to each word clearly reflect the distinction in meaning between them. *Comitia* accepts three main types of complement: 1.) an adjective denoting either the magistrate to be elected (e.g. *comitiis consularibus* Cicero *Ver* I 6,17; *comitia tribunicia* Livy IV 44,1) or the structure of the assembly regardless of its purpose (*comitia centuriata*: electoral -- Cicero *Agr* II 11,27; legislative -- Cicero *Red Sen* 11,27; judicial -- Cicero *RabPerd* 4,11; general -- Cicero *Dom* 14,38; *comitia tributa*: electoral -- Livy II 60,4; legislative and judicial -- Cicero *Leg* III 19,45; general -- Cicero *Att* IV 16,8); 2.) a gerundive phrase in the dative or genitive denoting the specific purpose of the assembly (*comitia consulibus rogandis* Cicero *Div* I 27,33; *comitia collegae subrogando* Livy II 8,3); 3.) an objective genitive, again denoting the purpose of the assembly (*comitia...sive magistratuum placet sive legum* Cicero *Sest* 51,109; *comitia capitis* Cicero *Leg* III 19,45). Occasionally the word is found with some other type of purpose construction (*comitia de reo/de lege* Livy III 24,7). *Concilium* on the other hand takes no regular modifiers that concern structure or purpose. The one passage I have found in which *concilium* takes a construction denoting purpose is Livy XXXII 20,4 *concilio ad eam rem indicto* «a council convoked for this reason,» which bears no relation to any of the purpose constructions so amply attested in connection with *comitia*. *Concilium* takes no modifiers related to the

modifiers of purpose similar to those found with *comitia*. On this basis, I would propose an emendation. As it stands, Livy III 16,6 *concilium legis* (O dett. unus: legi MUpDL: lege PFB) *perferendae habere, avvocato populo ab armis...* means «an assembly or council about passing the law.» As I have shown however, *concilium* is nowhere else found with this type of complement. I therefore propose to read *consilium*, «a conference» or perhaps «a plan concerning the passage of the law.»

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organization or structure of the meeting it designates. The distinction between the two words appears most clearly, perhaps, in the few cases where their modifiers most nearly resemble one another. Both *comitia* and *concilium* are capable of taking a noun in the genitive as a modifier; but the genitive with *comitia* is very different from that which follows *concilium*. *Comitia* plus the genitive, as I have remarked, is an explicit purpose construction similar to the gerundive phrases in the genitive and dative discussed above. The normal and almost the inevitable meaning of such a phrase is «elections of (consuls etc.)». In sharp contrast to this usage, *concilium* plus the genitive never means anything of the kind.⁷⁵ Here the genitive always specifies those attending the assembly, as in the phrases (*concilium*) *Aetolorum, Romanorum et sociorum, populorum Latinorum*, etc. This genitive I take to be a genitive of the whole. It is therefore clear that it was virtually impossible to express purpose by using the word *concilium*. To illustrate this truth, I offer the hypothetical phrase **concilium consulum*, which, if it occurred, would obviously mean not «elections of consuls,» but «an assembly or meeting of consuls.» *Comitia*, on the other hand, is not quite so severely limited. Here one finds a number of phrases whose superficial resemblance to *concilium* plus the genitive seems to argue against the distinction that I am proposing. Several passages contain phrases such as *comitia populi* (Cicero *Rep* II 32,56), a fact which to Botsford «implies the existence of other *comitia*, for instance *comitia plebis*.»⁷⁶ While Botsford is correct that *comitia* may refer to assemblies of both the *populus* and the *plebs*, and while, in the case of *concilium*, similar phrases are found (*concilium populi* Livy I 36,6; *concilium plebis* Livy III 18,6), the phrase **comitia plebis* never actually occurs; and in my opinion, it is a mistake to assume that it ever did. For the moment, however, I will postpone my defense of this position and simply note that those passages in which *comitia populi* appears are in any case too few to alter substantially the general impression that *comitia* tends to accept modifiers that relate to the structure or purpose of an assembly rather than its membership, while *concilium* takes modifiers related to the membership of an assembly rather than to its purpose or structure.⁷⁷

(75) RA 129.

(76) See paragraphs 3 I (with note 77) and 4 C-D below.

(77) They have, however, enjoyed an established place in scholarly usage (e.g. in the title of R. Develin's article *Comitia tributa plebis*, «Athenaeum» LIII [1975] 302-337). But while the use of such Latin terms may be convenient, it is misleading in that it can lead to false assumptions about attested ancient usage.

In Table 2,1 section C,1 are listed thirteen examples of *comitia* with modifiers that pertain to those who controlled the assembly. While in most of these passages the modifier clearly refers to those in charge of the *comitia* rather than to those in attendance (e.g. *comitia huius*, Cicero *Phil* VIII 9,27 of elections under the control of M. Antonius; *suis comitiis* Cicero *Rep* I 23,50 of imaginary elections under patrician control; cf. *Agr* II 11,27 and Livy V 29,1 for a similar view of plebeian elections; *comitia militaria* Livy III 51,8 [contrasted with *comitia urbana*] and XXV 37,6), a few seem at first to resemble the modifiers used with *concilium* to define the membership of an assembly (e.g. *comitia populi*, Cicero *Mur* 19,38 *Mil* 3,7 *Rep* II 32,56 *Div* II 18,42 Livy V 1,1; *comitia Transpadanorum*: Cicero [Caelius] *Fam* VIII 2,2). In light of what appears to be normal usage, however, it seems to me reasonable to postulate a difference in meaning between *comitia*

I. The evidence gleaned from examining the modifiers of *comitia* and *concilium* corroborates the impression that arises from studying the various meanings of the two words by frequency. *Comitia* is applied only to organized voting assemblies. While it is used to denote such assemblies outside of Rome, the word belongs particularly to the complex system of Roman voting assemblies, which varied greatly in their form. Accordingly, it is equipped with an impressive complement of modifiers corresponding to the various forms of assembly in which the Romans voted. Specific forms, moreover, corresponded to specific voting purposes; hence another array of modifiers that correspond to the various reasons for voting in the Roman state. When our sources speak of foreign *comitia*, we cannot necessarily infer an exact correspondence between the assembly in question and a cognate Roman assembly. In some cases such a relationship may exist, as in the case of the Sicilian assemblies mentioned by Cicero at *Ver* II 2,52,128 - 2,54,136. In other cases, however, the term *comitia* + modifier(s) will have offered a Roman writer the only means of expressing what he wanted to say about a foreign assembly, namely that its *purpose* on the occasion in question was (e.g.) to elect magistrates, a bit of information that *concilium* and its modifiers were incapable of conveying. On the other hand, if the same writer wished to speak of such an assembly as a Roman assembly, a plebeian assembly, or (let us say) an Etruscan one -- regardless of its purpose or structure -- he would find the word *comitia* practically useless. To prove this point I adduce the hypothetical phrases **comitia Romana*, *plebis*, *Etruscorum*, etc. Phrases of this sort, meaning «gatherings of the Romans, of the *plebs*, etc.,» simply do not occur in our sources. To express these ideas, ancient writers use the term *concilium* + modifier(s). This helps to explain why *comitia* is used so freely of voting assemblies of the *populus*, *plebs*, foreign confederacies, and so forth: the word is neutral with respect to the composition or membership of an assembly. Conversely, *concilium* is neutral with respect to purpose and structure. Indeed, *concilium* refers not at all to the governmental aspect of an assembly, but rather defines an assembly as a meeting of some particular group: hence an abundance of *concilia deorum*, *virtutum*, *pastorum*, and so forth. The emphasis in such phrases is on the homogeneity of the group rather than on its principle of organization or political agenda; and the political character of a *concilium*, if it exists at all, is no more than a direct function of the inherently political character of the group in attendance. Thus a *concilium plebis* is a political assembly, while a *divinum animorum concilium* (Cicero *Cato* 23,84) is manifestly not.

populi and *concilium populi*. While the latter clearly means «an assembly of the *populus*», I would render the former expression as «the people in assembly,» i.e. properly arranged by curiae, centuries, or tribes in order to conduct public business. Similarly *comitia Transpadanorum* will mean not «an assembly of the Transpadani (= **concilium Tr.*)» but «officially recognized and properly organized assemblies for the various Transpadane *municipia*.» Of course the term **comitia plebis*, if it ever occurred, would be open to the same interpretation; but since it never is found in ancient sources, it seems to me best to avoid it.

4. Terminology in context.

A. With this distinction in mind, I will now attempt to explain the patterns of ancient usage that appear in the surviving testimonia. It should be remembered that neither Livy nor Cicero is a disinterested witness to the use of these words. One may expect both authors to use the words accurately; but because the two words are not mutually exclusive, an author's decision to use one instead of another where either might have been possible must represent his intention to emphasize one aspect of a particular assembly over all others. The appearance of *comitia* will reflect the writer's concern with the purpose or structure of the assembly in question, while the appearance of *concilium* will signify his concern with its composition. In some instances, as I will show, the same writer applies both words to the very same assembly in different contexts, in order to emphasize different aspects of the assembly as each becomes appropriate to his discourse. Finally, it must be noted that the assemblies changed over time, and that such changes may well be reflected in the development of usage. In short, our sources used the words *comitia* and *concilium* in a way that reflects their own rhetorical, political, and historical concerns as well as their concern with standard usage and official nomenclature.

B. The process of development is most easily viewed in reverse, and Cicero is our best witness to usage at the end of the Republic. His concern is overwhelmingly with the events of his own lifetime, and most of the assemblies he describes took place during his public career. The vast majority of these he terms *comitia*, a word which he uses over 200 times. *Concilium* by way of contrast appears only 28 times in Cicero's works, and almost half of these passages do not concern voting assemblies at all. I therefore see no reason to doubt that *comitia* was the normal word used by all Romans to designate any voting assembly as such, whether electoral, legislative, or judicial. Botsford argues that the word was especially appropriate to elections; but in fact his own evidence shows that legislative and judicial assemblies were also called *comitia* far more often than anything else.⁷⁸ It is true, of course, that *comitia* is applied to electoral assemblies far more frequently than to any other kind; also that these assemblies were the most regular feature of the Roman political calendar. It may even be true that most Romans automatically understood *comitia* with no modifier as the term for «elections» in general, as most modern scholars assume.⁷⁹ Nevertheless, what these points illustrate is not so much the inherent meaning of *comitia* as the propensity of our sources (and, perhaps, of Romans in general) to record, discuss, and speculate on the yearly election of their public magistrates. Even so, this propensity is exaggerated by institutional development. By Cicero's time, nearly all judicial activity had been transferred from the assemblies to standing *quaestiones*.⁸⁰ Judicial *comitia*, or at least

(⁷⁸) Botsford's list of legislative and judicial *comitia* can be found at RA 134; cf. however my remarks in note 33.

(⁷⁹) *Comitia* is seemingly opposed to *leges* in (e.g.) Cicero *Fam* I 4,1 Livy III 24,9 VI 40,7.

(⁸⁰) RA 253.

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those involving the centuries, were therefore so rare that the occurrence of one became a *cause célèbre*.⁸¹ In Plautus' day, this was not so. In a number of passages we find Plautine characters speaking metaphorically of decisions concerning their fate as their *comitia*, or «trial».⁸² In Cicero, corresponding phrases occur only in the case of electoral *comitia* and mean «my election» or «my campaign».⁸³ Legislation, on the other hand, remained in the assemblies; between the retirement of Sulla and the dictatorship of Caesar, a period of only thirty years, well over a hundred bills were promulgated that we know of -- and there were probably many more of which we know nothing. Cicero, however, mentions only a few of these bills and seldom discusses the actual vote.⁸⁴ Here the point is that Cicero, especially in his letters, talks about the elections -- advising candidates, speculating on results, congratulating victors, etc. -- more than any other kind of comitial activity. Elections were certainly no more and were probably much less common than legislation; during the same thirty-year period between Sulla and Caesar, elections were held (generally) at only one time during the year, in the month of July.⁸⁵ For Cicero, however, and for his correspondents as far as one can judge, the relatively less frequent electoral *comitia* were of greater interest than the steady succession of legislative *comitia*. Furthermore, the undeniable tendency of *comitia* in Cicero to denote elections is increased by the fact that he mentions certain elections over and over again, always calling them *comitia*. Usually these are elections in which he himself had a personal interest. Especially prominent are his own consular, praetorian and aedilician elections;⁸⁶ the consular elections of 62, at which he officiated;⁸⁷ the elections of 50, about which, when he was serving as proconsul in Cilicia, he corresponded frequently with M. Caelius Rufus during the latter's campaign for the *aedilitas*;⁸⁸ and so forth.⁸⁹ In view of these facts, it is no wonder that *comitia* in Cicero

(81) E.g. the trial of C. Rabirius in 63 for *perduellio*, the only known post-Sullan trial before the centuries (Dio 37,27; Suetonius *Iul* 12).

(82) *Aul* 700 *ibo intro ubi de capite meo sunt comitia*; *Pseud* 1232 *Pseudolus mihi centuriata habuit capitis comitia*; *Truc* 819 *meo illic nunc sunt capiti comitia*.

(83) See Table 2,1 section B,1,i above.

(84) *Agr* II 11,27 *quater* 11,29 12,31 all concern the *lex curiata de imperio*; *RedSen* 11,27 *Dom* 30,79 *bis* 33,87 *Har* 6,11 *Sest* 38,82 51,109 *Pis* 15,35 *Fam* I 9,16 *Att* IV 1,4 *Leg* III 19,45 *bis* all concern legislation pertaining to Cicero's exile and recall; *Phil* I 8,19 X 8,17 *Att* XIV 12,1 concern Caesar's dictatorial legislation; *Att* I 14,5 concerns the *rogatio Pupia de incestu Clodi* of 61 (LPPR 385); *Att* II 15,2 concerns Caesar's attempted agrarian legislation in 60.

(85) Cf. note 24.

(86) *Ver* I 8,22 9,24 *bis* 9,25 II 1,7,19 *Man* 1,2 *Agr* II 2,4.

(87) *Catil* I 5,11 *Mur* 1,1 *bis* 25,51 *Sul* 18,51.

(88) *Fam* II 10,1; VIII 2,2 [Caelius] and 4,3; other elections of the same year: *Fam* VIII [Caelius] 2,2 4,3 *quater* 14,1.

(89) The impending tribunicial election of Clodius: *Att* II 20,6 21,5 23,3; the subsequent consular elections: *Att* III 12,1 13,1 *bis* 14,1 14,2 18,1; elections of curule aediles for 56: *Fam* I 4,1 *Att* IV 3,3 *bis* 3,4 3,5; and the consular elections of 162: *QFr* II 2,1 *Div* I 27,33 *ter* ND II 4,10 *bis* 4,11.

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4,10 bis 4,11.

«means» elections; hence Botsford's definition. At the same time, many of the elections that Cicero mentions are *the* yearly elections, viz. of consuls. These of course could only take place in the *comitia centuriata*, above all others the assembly of the *universus populus*;⁹⁰ hence the definition of Laelius Felix.

C. Cicero however usually calls legislative assemblies *comitia* as well, in violation of Botsford's formulation, as I have shown.⁹¹ It is instructive to note the exceptions to Cicero's normal usage, i.e. passages in which he actually does call legislative assemblies *concilium* -- a word that he uses only infrequently in a political sense -- rather than by the normal *comitia*. An illuminating set of examples are his references to the various assemblies that voted his exile and subsequent recall. The measures passed in these assemblies lend substance to his discussion of *privilegia* and capital trials at Leg III 19,44-45 (italics indicate emphasis):

tum leges praeclarissimae de XII tabulis tralatae duae, quarum altera privilegia tollit, altera de capite civis rogari nisi maximo comitiatu vetat. *et nondum inventis seditiosis tribunis plebis, ne cogitatis quidem, admirandum tantum maiores in posterum providisse.* in privatos homines leges ferri noluerunt; id est enim privilegium. quo quid est iniustius, cum legis haec vis sit, scitum et iussum in omnis? ferri de singulis nisi *centuriatis comitiis* noluerunt; descriptus enim populus censu ordinibus aetatibus plus adhibet ad suffragium consilii quam fuisse in tribus convocatus. [45] quo verius in causa nostra vir magni ingenii summaque prudentia, L. Cotta, dicebat nihil omnino actum esse de nobis; praeter enim quam quod *comitia illa essent armis gesta servilibus, praeterea neque tributa capitis comitia rata esse posse neque ulla privilegii.* quocirca nihil opus nobis esse lege, de quibus nihil omnino actum esset legibus. sed visum est et vobis et clarissimis viris melius, de quo servi et latrones scivisse se aliquid dicerent, de hoc eodem cunctam Italiam quid sentiret ostendere.

Whenever he gloats over this episode, Cicero never fails to mention that he was recalled by the centuriate assembly. His reasons for stressing the organization of this assembly are several, and can be seen in this passage. First, the bill depriving him of fire and water was passed -- illegally, as he maintains -- in the *tribal* assembly; but, he claims, such action could only be taken by the *centuriate* assembly, which a tribune was powerless to convoke. Here Cicero's argument demonstrates the intimate connection between form and purpose in the word *comitia*. Second, he seems to regard the centuriate assembly as inherently more authoritative than the tribal assembly.⁹² Here form alone is specifically at issue; but the question of form can hardly be detached from that of purpose, for it is a fact that the centuriate form of assembly was the one that voted on all the most important decisions that the Roman people had to make -- electing magistrates with *imperium*, declaring war, judg-

(⁹⁰) While a tribal assembly under the presidency of a curule magistrate also constituted the *universus populus*, this phrase is especially associated with the centuriate assembly: see note 93.

(⁹¹) See Table 1,1 section A,1.

(⁹²) RedSen 11,27 ...*comitiis centuriatis, quae maxime maiores comitia iusta dici haberique voluerunt*....

ing capital cases, and so forth. It is the immense prestige of this assembly that is summed up in the phrase *maximus comitiatus*;⁹³ and it is this prestige that Cicero contrasts with that of the less august *tribal* assembly that sent him into exile. Third, in a related passage Cicero creates a different contrast between the prestige of the centuriate assembly that recalled him from exile and the return of other famous exiles by order of the less grand *comitia tributa*: cumque Metellum unius tribuni plebis rogatio, me universa res publica duce senatu, comitante Italia, promulgantibus omnibus magistratibus, comitiis centuriatis, cunctis ordinibus hominibus incumbentibus, omnibus denique viribus recipavisset. *Fam* I 9,16; cf. *Dom* 32,86-33,87

D. Conversely, there are also occasions when Cicero prefers to call the assembly which brought about his exile a *concilium*. This is the situation at *Dom* 30,79 and *Sest* 30,65. In these passages, his purpose is not (as in *Leg* III 19,44-45) to emphasize the constitutional irregularity involved in his being exiled by a tribal (instead of by a centuriate) assembly, but rather to inspire his listeners with moral outrage at the thought of a Roman citizen and ex-consul being deprived of his civil rights by a seditious *faction* within the state.⁹⁴ In this connection, Cicero's remark at *Sest* 14,32 takes on greater significance: nullum erat Italiae municipium, nulla praefectura, nulla Romae societas vectigalium, nullum conlegium aut *concilium* aut omnino aliquod commune consilium quod tum non honorificentissime de mea salute decrevisset.

Cicero's diction in this passage (*conlegium* and *concilium*) seems intended to recall two important components of Clodius' party, the *collegia* from which he recruited his henchmen and the *concilium plebis*, which he used to effect his illegal legislation. I regard this use of *concilium* as a slight extension of its natural meaning. It seems clear from the genitive modifier that so often accompanies the word that the basic meaning of *concilium* is «an exclusive gathering of some homogeneous group.» Moreover, the relatively large number of occurrences of *concilium* in a non-political sense suggest that the word is not in origin a *terminus technicus* proper to the realm of politics, as is *comitia*, but that instead it is simply an ordinary word which applies equally well to political and non-political gatherings. The development of *concilium* in the political sphere must have been as follows. The primitive gathering of the *plebs*, before it had attained any official constitutional status, was naturally referred to as the *concilium plebis*, i.e. the meeting of the many as opposed to the oligarchical *patricii*. This usage is exactly parallel to Ciceronian expressions like *in deorum concilio* (*ND* I 8,18) where the emphasis is simply on the homogeneous character of the gathering. But it is a short step from homogeneity to exclusivity. When the *concilium*

(⁹³) Cicero *Leg* III 19,44; A. Magdelain, *Praetor maximus et comitiatus maximus*, «Jura» XX (1969) 257-86.

(⁹⁴) *Sest* 30,65: cur, cum de capite civis -- non disputo cuius modi civis -- et de bonis proscriptio feretur, cum et sacris legibus et XII tabulis sanctum esset ut ne cui privilegium inrogari liceret neve de capite nisi comitiis centuriatis rogari, nulla vox est audita consulum, constitutumque est illo anno, quantum in illis duabus huius imperi pestibus fuit, iure posse per operas concitatas quemvis civem nominatim tribuni plebis concilio ex civitate exturbari?

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plebis achieved recognition as a legitimate voting assembly organized by tribes (Livy II 56), it became known formally by the technical term of Roman constitutional law, *comitia tributa*, as well; but it remained possible to use the traditional and less formal *concilium plebis*. The latter term will have been used to distinguish tribal assemblies of the *plebs* (i.e. those convoked by a tribune) from tribal assemblies of the *populus*. This is a distinction which the established technical terminology (*comitia tributa*) could not express, but one which was to the point in an era when measures passed by a plebeian assembly (*plebiscita*) did not have the same binding power as measures passed by the *populus* (*leges*), and when patricians were certainly excluded from the plebeian assembly. Livy, interestingly, uses *concilium plebis* chiefly in the early books of his history in his account of the struggles between the *ordines*, where the exclusively plebeian membership of this assembly is a more relevant datum than the fact that it was organized by tribes. But in later books, particularly those covering the period after the passage of the *lex Hortensia* of 287, *concilium plebis* appears very infrequently.⁹⁵ The reason is that this measure, by setting *plebiscita* equal to *leges*, removed the last important barrier to political equality between the *ordines*, rendering emphasis on the exclusive character of plebeian assemblies pointless. Consequently, *concilium* in the later books of Livy refers almost solely to foreign assemblies. It remained possible, however, to call the tribal assembly meeting under a tribune by the term *concilium plebis* whenever a writer wished to connote the historically factious and seditious character of such assemblies. The surviving books of Livy do not cover the second great period of tribunicial innovation, from the time of the Gracchi to the end of the Republic. For this period I return to Cicero, who exploits the seditious connotation of *concilium plebis* in the passages quoted above and in *Vat* 7,18: num quem ex omnibus tribunis plebis, quicumque seditiosi fuerunt, tam audacem audieris fuisse, ut umquam contra leges Aeliam et Fufiam *concilium* advocaret? (cf. 2,5 and 6,15) It seems in fact that Cicero's frequent use of *concilium* in this speech may reflect his overall rhetorical plan: *tota interrogatio mea nihil habuit nisi reprehensionem illius tribunatus* (*Fam* I 9,7). In cases such as these, the basic meaning of *concilium plebis* remains «a meeting of the *plebs*,» inherently perhaps no less honorable than Livy's *patrum concilium* (IV 48,5), but with the extended meaning of «a factious, seditious conclave.» I might add that, while the historically exclusive character of the *concilium plebis* may have contributed to Cicero's derogatory use of the term, it is difficult to imagine that this tactic would have been very effective if the *concilium plebis* of the Late Republic had not remained, at least notionally, an assembly that excluded patricians in contrast to the all-inclusive assemblies of the *populus*.

E. The general meaning of *concilium* is therefore not far removed from Laelius Felix's definition of the word in the political sphere as «a part of the people in assembly;» for while the *plebs* was the most numerous and important group within the state to be

(⁹⁵) Seven occurrences in books I-VII, ten in the next twenty-eight books: see Table 2,2 section A,1,a. The periochae place Livy's account of the *secessio plebis* in Book 11.

distinguished in assembly on the basis of membership, Livy and Cicero also distinguish gatherings of other exclusive groups, political and non-political, by using *concilium*. As for Botsford's objection on the basis of the phrase *concilium populi*, I point out that this phrase, too, occurs only in the early books of Livy's history, where he is interested in distinguishing the young *populus Romanus*, the «chosen people» of his history, from their Latin brethren.⁹⁶ He wishes, in other words, to emphasize what is unique about the *populus*, and hence concentrates on the exclusivity of its first assemblies. This practice parallels his use of *concilium* to designate the exclusive gatherings of other nations throughout his history. In the later books, however, he has no need to labor the distinction between the Romans and other peoples; *populus* consequently becomes the inclusive term, in contrast to the exclusive terms *plebs* and *concilium plebis*.

F. On the whole, however, the proper term for assemblies at Rome was *comitia* + modifier(s), since the constitution distinguished the competence of the various assemblies solely with regard to their organization and presidency. This is at any rate the term preferred by both Livy and Cicero when discussing electoral, legislative, and judicial assemblies of either the *populus* or the *plebs*; and while some passages seem to indicate that *comitia* is incompatible with *concilium* (e.g. *RedSen* 5,11 *concilio aut comitiis*), in fact it is not, since both authors apply both words not merely to similar assemblies, but to the very same assemblies.⁹⁷

G. To sum up: *Comitia*, usually in combination with modifiers denoting either the purpose or the internal organization of an assembly, is the normal word used to refer to any Roman voting assembly. *Concilium*, a word that denotes any exclusive, homogeneous gathering, is often applied to Roman assemblies which are exclusive in some sense, particularly assemblies of the *plebs*, sometimes with the extended meaning of «a self-serving faction.» This distinction is clear, simple, and securely grounded in ancient usage. It admits of no exceptions.

Joseph Farrell

⁽⁹⁶⁾ Botsford *RA* 120-21. *Concilium populi* in the early books of Livy: I 26,5 36,6 III 71,3 VI 20,11.
⁽⁹⁷⁾ See note 35.